

2:18-cv-07011-JMA-AYS | 2:21-cv-00014-JMA-AYS

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**United States District Court**  
*for the*  
**Eastern District of New York**

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**JOHN LEPPER and NOELLE LEPPER**, individually and as parents and natural guardians of their infant children,  
**B.J.L. AND B.I.**,

*Plaintiffs*

—v—

**VILLAGE OF BABYLON**; and  
**ESTATE OF RALPH SCORDINO**, Mayor—decedent, **KEVIN MULDOWNEY**, current/former Deputy Mayor, **ROBYN SILVESTRI**, current/former Village Trustee, **TONY DAVIDA**, current/former Village Trustee, **MARY ADAMS**, current/former Village Trustee and acting Mayor; **STEPHEN FELLMAN**, Village of Babylon Building Inspector; **SUZANNE SCHETTINO**, Department of Public Works; **GERARD GLASS**, Esq., current/former Village of Babylon Attorney; **DEBORAH LONGO**, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants,

*Defendants*

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**PLAINTIFF’S STATEMENT OF DISPUTED FACTS  
OPPOSING DEFENDANTS MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO LOCAL RULE 56.1 AND  
COUNTER-STATEMENT OF FACTS**

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**LAW OFFICES OF CORY H. MORRIS**

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VICTOR JOHN YANNAcone, JR., *of counsel*

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## **PLAINTIFFS' RESPONSE TO DEFENDANTS' RULE 56.1 STATEMENT**

Pursuant to Local Civil Rule 56.1 (b), Plaintiffs, by their attorneys The Law Office of Cory H. Morris and Victor John Yannacone, jr., *of counsel*, respond to Defendants' Rule 56.1 "Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Judgment" as follows:

1. John Lepper and Noelle Lepper own and owned for all times mentioned in their first Amended Complaint the house and property located at 59 Cockenoe Road in the Incorporated Village of Babylon in the County of Suffolk, State of New York. (Exhibit B, Exhibit I)

2. John Lepper and Noelle Lepper have two minor children who have resided for all times mentioned in the Amended Complaint at 59 Cockenoe Avenue in the Incorporated Village of Babylon in the County of Suffolk, State of New York. (Exhibit I, pp. 1–10).

3. The property at 59 Cockenoe Avenue fronts two public streets, Cockenoe Avenue on one side and Wampum Road on the other.

4. John Lepper commenced construction of a wooden structure in a tree (for all times hereinafter mentioned as "the treehouse") on the property of 59 Cockenoe Road in or before May 2018.

5. Before starting the construction of the treehouse John Lepper did not make an application for a permit. (Exhibit I, Exhibit Q affidavit of Stephen Fellman).

6. For all times mentioned in the Amended Complaint Stephen Fellman was and is the Village Inspection [*sic*] for the Incorporated Village of Babylon. (Exhibit Q, affidavit of Stephen Fellman)

7. Stephen Fellman was informed by Anthony Davida that there was a structure being built in a tree at 59 Cockenoe Avenue in



the Village of Babylon. In his capacity of Village Building Inspector, Stephen Fellman transmitted a letter in May 2018 advising John Lepper may require a permit for a wooden structure in the tree that did not have walls or a roof. (Exhibit Q, affidavit of Stephen Fellman, Exhibit V, affidavit of Anthony Davida)

In the absence of any reference to a specific paragraph of Defendants' Exhibits Q and V supporting the foregoing statement of alleged undisputed material fact that "Stephen Fellman was informed by Anthony Davida that there was a structure being built in a tree at 59 Cockenoe Avenue," Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact with Ex. 28, Anthony Davida Deposition, 148:2–15 (noting "new timbers" without a "permit in the window.")

8. John Lepper continued construction of the treehouse after the letter requesting that he talk to Stephen Fellman in May 2018 (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert the reference to Exhibit Q. Plaintiffs' Ex. 2, Letter from Defendant Stephen Fellman dated May 10, 2018; (Plaintiffs' Ex. 3, 4, 44 ¶¶ 9–21);

9. During construction of the treehouse, John Lepper went to Village Hall to obtain a permit for the treehouse on May 21, 2018 (Exhibit I, Exhibit I, [sic] Exhibit Q, affidavit of Stephen Fellman).

10. The permit application filed by John Lepper did not contain signed and sealed plans by a licensed professional engineer or architect. (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and

controvert the statement to the extent that it assumes “signed and sealed plans by a licensed professional engineer or architect” are required for construction of a treehouse whose floor area is less than 90 ft<sup>2</sup>. Plaintiffs did submit a sealed letter opinion and work papers from a licensed professional engineer, (Plaintiffs’ Ex 7, 8) and there is deposition testimony that no certificate of occupancy issued for a structure less than 90 square feet. Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 163–164; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 41.

11. All or part of the treehouse is situated less than ten feet from property line on the Wampum side of the property at 59 Cockenoe Avenue in the Incorporated Village of Babylon. (Exhibit Q, affidavit of Stephen Fellman, Exhibit W, affidavit with report of Joseph Danatzko with photographs).

In the absence of any reference to a specific paragraph of Defendants’ Exhibit W supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. Plaintiffs’ Exhibits 5, 6.

12. Specifically, the tree house is located 13 feet, 1 inch from the interior edge of the curb along Wampum Road and 4 feet, 6 inches from wood fencing adjacent to Wampum Road, and the centerline of the subject tree was located approximately 9 feet, 10–1/2 inches east and 25 feet north of the single familiar residence on the property. (Exhibit W, affidavit with report of Joseph Danatzko).

13. The treehouse was constructed from old timber from a boathouse owned by the Lepper family that had been destroyed in Superstorm Sandy (Exhibit W, affidavit with report of Joseph Danatzko, Exhibit I, 58–62)

In the absence of any reference to a specific paragraph of Defendants’ Exhibit W supporting the foregoing statement of

alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. Some of the Lepper children's treehouse was not entirely constructed from old timbers as evidenced by sworn testimony (Plaintiffs' Exhibit 38, Deposition of John Lepper 138:10–19, 138–139) for which John Lepper purchased several items from various hardware stores and described that this is where he got some of the wood. See Plaintiffs' Exhibit 38, Deposition of John Lepper 60:3–14, 64:24–65:3.

14. Except that Mr. Lepper claims that the trees were healthy when they were pruned, no inspection was done on the tree to determine the stability of the tree to support the tree house. (Exhibit I, pp. 58–62).

Plaintiffs' deny the allegations in paragraph 14 to the extent that Mr. Lepper had a professional inspect the trees and the trees were considered healthy, Plaintiffs' Exhibit 38, Deposition of John Lepper 55–58, without qualification. See *Id.* at 58:19–59:7 (“the remainder [of the trees] were healthy” and one was not, so it was removed).

15. Mr. Lepper built the tree house and was not familiar with the Village zoning or building codes at the time he constructed the tree house. He also had no experience building a treehouse with the exception of building a tree house when he was a boy. (Exhibit I, pp. 24–25, 58–60, 283–293).

Plaintiffs dispute and controvert the foregoing statement of alleged undisputed material fact by Defendants, (Plaintiffs' Exhibit 48, Affidavit of John Lepper, ¶ 5) and report that John Lepper's testimony is the most accurate reflection of the statement of fact asserted by Defendants. See, e.g., Plaintiffs' Exhibit 38, Deposition of John Lepper 26:17–22 (responding “no” to whether he “dealt with building codes” as a contractor).

16. The tree was constructed of wood that is not pressure treated wood. (Exhibit W, affidavit with report of Joseph Danatzko).

17. The lot area of the platform base of the tree house measures 111.7 square feet. (Exhibit W, affidavit with report of Joseph Danatzko).

18. The platform base of the tree house is 8 feet, 8 13/16 inches above grade level. (Exhibit W, affidavit with report of Joseph Danatzko).

19. There is electrical wiring to the tree house which is used in part to provide electricity to an outdoor light on the exterior of the tree house. There was no electrical underwriter's certificate for any electrical components in or on the tree house. (Exhibit W, affidavit with report of Joseph Danatzko).

In the absence of any reference to a specific paragraph of Defendants' Exhibit W supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. Plaintiffs dispute and controvert the foregoing statement of alleged undisputed material fact by Defendants as to, among other things, "electric wiring" as evidence in Plaintiffs' Exhibit 44, ¶ 5; Plaintiffs' Exhibit 38, Deposition of John Lepper 54:3–8.

20. The only means of ingress and egress from the tree house is to go through a window, which Mr. Lepper employs the use of a free-standing ladder. (Exhibit I, pp. 90–93; Exhibit W, affidavit with report of Joseph Danatzko).

In the absence of any reference to a specific paragraph of Defendants' Exhibit W supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. (Plaintiffs' Exhibit 44, Affidavit of John Lepper ¶ 47). Defendants Ordered Plaintiff to stop working on the

treehouse (Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, 304:12–20, see pp. 390–393) for which John Lepper (*id.* 87:7–13) stated under oath that he had “to finish putting the roof on, shutters, secure the windows to make it safe for the kids to play up there and install the hatch in the floor so that the kids can actually access it.” *Id.*, see also 304:12–20.

21. On July 31, licensed professional engineer Joseph Danatzko inspected the tree house and found conditions in violation of building codes. He opined that there were unsafe conditions in the tree house. (Exhibit W, affidavit with report of Joseph Danatzko). Plaintiffs do not dispute this statement of fact as to the date of inspection by Joseph Danatzko. However, in the absence of any reference to a specific paragraph of Defendants' Exhibit W supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert the opinion that there were unsafe conditions in the tree house as evidenced by another licensed architect and the treehouse builder, see Plaintiffs' Exhibits 7, 8, 24, 25 and 48, especially when compared to other similarly situated treehouses in the Village of Babylon that were not produced in discovery, Plaintiffs' Exhibits 9-13, or subjected to the same inspection (see, e.g., Plaintiffs' Exhibit 1) but were instead subjected to a “spot” load test by Defendant Stephen Fellman. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 165:5–13.

22. Plaintiffs admit the allegations in Paragraph 22 that Tickets were issued by the Village of Babylon to John Lepper in connection with his construction of the treehouse. (Exhibit R, affirmation of Gerard Glass).

23. John Lepper was told that he would need to obtain a variance for the treehouse and signed and sealed plans were required. (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert allegations. Plaintiffs' Exhibit 44, Affidavit of John Lepper, ¶¶ 30, 48, 63.). Plaintiff John Lepper provided sworn testimony that (Plaintiffs' Exhibit 38, Deposition of John Lepper 249:20–250:9) there was no discussion of a variance, only a demand for payment without explanation. See *id.* 250:10–18, 248:4–8, see also *id.* 239:23–240:6 (stating the Building Permit Application submitted by John Lepper was accepted).

24. John Lepper claims that Justice Court Judge Rafter directed John Lepper to stop work on the treehouse and unplug the light to the tree house on September 4, 2018. (Exhibit A, amended complaint, para. 66).

25. Though he lacked a permit and was told he needed a permit to construct the tree house, John Lepper continued construction on the treehouse. (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact (Plaintiffs' Exhibit 44, Affidavit of John Lepper, ¶¶ 20, 31.) insofar as John Lepper was not told he needed a permit (Plaintiffs' Exhibit 38, Deposition of John Lepper 282:9–18) and that he “never received anything other than the letter stating that a permit may be required. I filed for the permit.” *Id.*

26. No tickets were issued to Noelle Lepper or the Lepper children. (Exhibit R, affirmation of Gerard Glass).



27. John Lepper did not apply for a variance with the Zoning Board of Appeals of the Village of Babylon. (Exhibit R, affirmation of Gerard Glass, Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibits R and Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert the reference to Exhibit Q because nothing in that Exhibit supports Defendants' statement. See Plaintiffs' Exhibit 44, Affidavit of John Lepper, ¶¶ 30, 48, 63; Plaintiffs' Exhibit 42, Deposition of Noelle Lepper, 271:4–12; Plaintiffs' Exhibit 38, Deposition of John Lepper 249:20–250:18. Defendants never stated that an application for a variance was required until this litigation. *Id.*; see also Plaintiffs Exhibits 9, 13 (evidencing other similarly situated treehouses not otherwise provided by the Defendants, built without a permit, not treated as the Lepper Family Treehouse).

28. John Lepper did not seek any remedy before the Zoning Board of Appeals of the Village of Babylon contesting that a permit was not issued for his treehouse. (Exhibit R, affirmation of Gerard Glass).

In the absence of any reference to a specific paragraph of Defendants' Exhibit R supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact and deny the statement of law in “seek any remedy before the Zoning Board of Appeals” as legal argument presupposing administrative remedies. See Plaintiffs' Exhibit 44, Affidavit of John Lepper, ¶¶ 30, 48, 63; Plaintiffs' Exhibit 42, Deposition of Noelle Lepper, 271:4–12.

29. Plaintiff objects to the following statement of law as not a statement of fact to be supported by an expert witness



hired by the Village of Babylon; the Village of Babylon Code speaks for itself:

Section 365–26 of the Code of the Incorporated Village of Babylon states:

A. No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable.

[Amended 10–24–2006 by L.L. No. 8–2006; 7–14–2015 by L.L. No. 5–2015]

B. No permit shall be required for a storage shed located on the same plot as a one– or two–family dwelling, provided that only one storage shed shall be located on such plot and that such storage shed shall be securely anchored to the ground, shall comply with the structural provisions of the New York State Uniform Fire Prevention and Building Code and shall comply with all other Village laws, rules and regulations. Any storage shed which, in the opinion of the Building Inspector, has become dangerous, unsound, unsafe or hazardous as a result of fire, neglect, disrepair, structural failure, collapse, vandalism or any other means shall be declared a public nuisance. Any such

shed declared to be a public nuisance shall be removed in accordance with the Building Inspector's specifications.

C. Decks/patios; outdoor playgrounds and gyms.

[Added 9-9-1986 by L.L. No. 4-1986; amended 1-11-1994 by L.L. No. 1-1994]

(1) As used in this subsection, the following terms shall have the meanings indicated:

**DECK/PATIO**

A single- or multi-level open flat or roof-enclosed structure composed of wood, metal, masonry or similar material.

(2) Decks and patios over 18 inches in height shall conform to minimum setback requirements of the main structure. A building permit shall be required for a deck/patio which is 18 inches or more above the adjacent grade level.

(3) A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.

(Exhibit W, attested report of Joseph Danatzko)

30. The Plaintiffs did not serve their notice of claim upon the Village of Babylon thirty-days or more before filing the summons and complaint in this action, Docket Number 2:18-cv- 07011. (Exhibit A, summons and complaint; Exhibit M, first notice of claim). Lepper home before the tree house was built. (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit W supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. Declaration of Attorney Cory H. Morris, ¶ 24,

D.E. 20. Defendants submitted a stipulation and waiver under Docket Entry 20 that was the subject of a premotion conference before the Honorable Joseph F. Bianco and Plaintiff respectfully objects to all statements of law made as if a material fact herein.

31. Plaintiffs did not attend a 50–h hearing pursuant to New York's General Municipal Law before filing the summons and complaint in this action, Docket Number 2:18–cv–07011. (Exhibit A, Exhibit B).

Defendants never noticed such a hearing and Plaintiffs dispute and controvert the foregoing statement of alleged undisputed material fact by Defendants. Declaration of Attorney Cory H. Morris, ¶ 24, D.E. 20.

32. The late Ralph Scordino was Mayor of the Village of Babylon served as mayor from 2020 until his death on October 29, 2020. (Exhibit L, pp. 165–172).

33. Robyn Silvestre served as Village Trustee from July 28, 2018 and still serves as Village Trustee. (Exhibit AA, affidavit of Robyn Silvestre).

34. Mary Adams served as Village Trustee from June 15, 2016 until she was inaugurated to the office of Mayor of the Village of Babylon on October 30, 2020. (Exhibit Z, affidavit of Mary Adams).

35. Kevin Muldowney served as Village Trustee and Deputy Mayor for all times alleged in the complaint until September 1, 2020 (Exhibit T, affidavit of Kevin Muldowney).

36. Anthony Davida served as Village Trustee from 2002 until December 31, 2020. (Exhibit V, affidavit of Anthony Davida).

37. Stephen Fellman has been employed by the Village of Babylon as Building Inspector since 1991. (Exhibit Q, affidavit of Stephen Fellman).

38. Gerard Glass served as Village Attorney from 2018 until April 5, 2021. (Exhibit R, affirmation of Gerard Glass).

39. Deborah Longo had been employed by the Village of Babylon from 2008 until August 1, 2020. (Exhibit U, affidavit of Deborah Longo).

40. Suzanne Schettino had been employed by the Village of Babylon from 1997 until April 29, 2021. (Exhibit S, affidavit of Suzanne Schettino).

41. While constructing the tree house, John Lepper was aware that no permit was issued and he continued to build the tree house expecting that a stop work order would be issued because no permit was issued. He understood that the "acceptance" of the permit application by Deborah Longo was not an approval of the permit application, but rather it would be taken for review. (Exhibit I pp. 270–271, 303, Exhibit U, affidavit of Deborah Longo).

In the absence of any reference to a specific paragraph of Defendants' Exhibit U supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. Plaintiffs' Exhibits 3, 4; Plaintiffs' Exhibit 44, Affidavit of John Lepper, ¶¶ 9–21, Plaintiffs' Exhibit 36, Deposition of Deborah Longo, 62:3–13, 77:14–19, 87:7–14, 88:19–25, 89:2–6, 97:3–8, 17–21 (this lawsuit is a "blip" to her); 204:3–20 (noting the profound lack of ability to recall the events or conversations so vividly remembered in her subsequent affidavit); 129:14–17 (took paper work and spoke to John Lepper for all of three minutes); see also, Anthony Davida Deposition, pp. 115–117, 117:6–7 ("Q. You just don't remember anything? A. No").

Plaintiff John Lepper testified at length as to phone calls, appointments (Plaintiffs' Exhibit 38, Deposition of John Lepper 242:11–13, 246:2–8, 263:11–23), following instructions of the building department Defendants (*id.* at 269:19–270:2) and that the permit could be issued based on what John Lepper provided to the Village of Babylon Building Department. *Id.* at 270:3–21. Further, John Lepper (Plaintiffs' Exhibit 44, Affidavit, ¶¶ 6-7) testified he

submitted a permit application, *id.*, followed the instructions of the Building Department, *id.* at ¶¶ 10-14, and made phone calls, *id.* at ¶¶ 16-19, for which Defendants wish for this Court to assume the pretextual and legal conclusion of permit validity for which Plaintiffs' contest this issue of material fact.

42. John Lepper claimed that he defended his case in the Justice Court asserting that the building code did not apply to him because the structure was under 90 square feet. (Exhibit A, plaintiffs' amended complaint, para. 71).

43. In a video recorded interview on November 2018 with Newsday, John Lepper told the reporter that he and his family used the tree house as a chapel, named the GFY Chapel, the Good For You Chapel. He considered the issue one of religious freedom. (Exhibit I, pp. 160–178).

44. John Lepper reportedly made the statement to Newsday to protect his rights and he had no attorney at the time he made the statement. (Exhibit I, pg. 174).

45. John Lepper never had personal discussion about the issues of the treehouse with Mayor Ralph Scordino. (Exhibit I, pp. 307–313).

Plaintiffs dispute and controvert the foregoing statement of alleged undisputed material fact by Defendants. Defendants' qualification of personal discussion about the treehouse is misleading at best, see Plaintiffs' Exhibit 38, Deposition of John Lepper 325:2–12, especially in light of the enormous support of the Village of Babylon citizens who “knocked on the mayor’s door” and “spoke to him about it.” *Id.* at 309:18–24; see also Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 9 (noting John Lepper’s efforts to reach out to the appropriate avenue, persons who worked with the Mayor, to comply with whatever rules Defendants sought to place on the Lepper Family Treehouse).

46. Before Mr. Lepper was told he needed a permit for the treehouse, another family seeking to build a structure in a tree was told that a permit was needed (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact. Declaration of Attorney Cory H. Morris, ¶¶ 9–22, Plaintiffs' Exhibits 9–12. Plaintiffs sought out this information in discovery yet, as evidenced by the latest conference in New York State Court litigation over Freedom of Information Law Requests by the undersigned the Defendants remain steadfast in refusing to produce relevant discovery that would support Defendants' affidavit produced for the purpose of obtaining summary judgment. See Fed. R. Civ. P. 56(d).

47. The owners of the Baldauf tree house were not granted a permit and were required to apply to the Zoning Board of Appeals and were required to submit signed sealed plans and a survey by a licensed surveyor in order to apply for a variance with the Zoning Board of Appeals. Their application for a variance for the tree house in violation of the setback requirements was denied. (Exhibit X, Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibits X and Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact as sought (Declaration of Attorney Cory H. Morris, ¶¶ 9–22, Plaintiffs' Exhibits 9–12, establishing material evidence was sought as to other treehouses) and denied by Defendants. See Fed. R. Civ. P. 56(d).



48. Stephen Fellman had issued permits to the Leppers for work performed on the Lepper home before the tree house was built. (Exhibit Q, affidavit of Stephen Fellman).

49. Stephen Fellman's purpose for contacting John Lepper regarding the subject tree house was to enforce the Code of the Village of Babylon. (Exhibit Q, affidavit of Stephen Fellman).

In the absence of any reference to a specific paragraph of Defendants' Exhibit Q supporting the foregoing statement of alleged undisputed material fact, Plaintiffs dispute and controvert said foregoing statement of alleged undisputed material fact as self-serving testimony concerning the state of mind of a Defendant.

50. John Lepper was never told by any of the originally named defendants that they objected to his making complaints about any drugs problems in the Village of Babylon. (Exhibit I, p. 361).

Plaintiffs dispute and controvert the foregoing statement of alleged undisputed material fact by Defendants. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 255:7-18, 256:5-13; see also Declaration of Attorney Cory H. Morris, ¶¶ 9-22 (concerning the lack of candor in discovery).

51. John Lepper handed a copy of the summons and complaint under Docket Number 21-cv-00014 to someone other than the Village Clerk at Village Hall. John Lepper handed a copy of the summons and complaint under Docket Number 21-cv-00014 to someone in Gerard Glass' office and not to Gerard Glass. No other summons and complaint under Docket Number 21-cv-00014 was served by John Lepper or on his behalf. (Exhibit R, affirmation of Gerard Glass).

Plaintiffs dispute and controvert the foregoing statement of alleged undisputed material fact by Defendants as drawing for



a legal conclusion and ignoring the Court Ordered Consolidation and This Honorable Court's stay of motion practice in the Consolidated matter together with an objection to the legal conclusions regarding service in a preexisting court action consolidated by Court Order. See Declaration of Attorney Cory H. Morris, ¶¶ 24–30.

52. John Lepper offered on social media to provide copies of video depositions of the defendants that were taken in the instant action. (Exhibit Y)

## **PLAINTIFFS' STATEMENT OF MATERIAL FACTS OPPOSING DEFENDANTS' RULE 56.1 STATEMENT**

Plaintiff **John Lepper** and **Noelle Lepper**, individually and as parents and natural guardians of their infant children, B.J.L. and B.I., set forth the following material factual assertions in opposition to the purported factual assertions set forth by Defendants in its Rule 56.1 Statement of Facts:

1. It was a joint decision to build the treehouse based on finding a hypodermic needle in the bushes of 59 Cockonoe Avenue, Village of Babylon, County of Suffolk, State of New York (hereinafter "Subject Property"). Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 85:2–20, 89 14–22; Plaintiffs' Exhibit 38, Deposition of John Lepper 421:14–21
2. John Lepper found a hypodermic needle at the Subject Property. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 89:23–25; Plaintiffs' Exhibit 38, Deposition of John Lepper 63:22–64:4, 179:16–180:7.
3. The hypodermic needle John Lepper found was on the ground where the Plaintiff children played. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 91:7–15, Plaintiffs' Exhibit 38, Deposition of John Lepper 203:5–205:16, 289:9–20.
4. Plaintiff Noelle Lepper is a Registered Nurse. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 52:12–15.
5. Noelle Lepper was able to identify the hypodermic needle because of her training as an "RN," Registered Nurse. (Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 94–95:23–25, 1–2.
6. The discovery of the hypodermic needle was a huge concern for Plaintiffs as their "kids can reach it and get HIV or Hep C

or any other disease.” Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 99:5–11; Plaintiffs’ Exhibit 38, Deposition of John Lepper 58:7–18.

7. Neighbors of the Lepper Property found similar hypodermic needles on their property. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 94:6–11; 103:5–23; Plaintiffs’ Exhibit 38, Deposition of John Lepper 179:16–180:7, 181:2–5.
8. Plaintiffs told neighbors about the hypodermic needle found at the Subject Property. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 101:20–22; Plaintiffs’ Exhibit 38, Deposition of John Lepper 179:16–180:7.
9. Plaintiffs neighbors confirmed with Plaintiffs that drug activity was occurring in the neighborhood. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 103:5–23; Plaintiffs’ Exhibit 38, Deposition of John Lepper 212:24–213:6.
10. Plaintiffs’ neighbors reported illegal drug activity in the neighborhood. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 110:8–20, see *id.* at pp. 110–112; see, e.g., Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 134:11–24 (Mayor’s Office receives complaints directly); Plaintiffs’ Exhibit 38, Deposition of John Lepper 179:16–180:7.
11. Plaintiffs’ neighbors are aware that one set of neighbors has issues with drugs. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 121:5–11; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶¶ 13-15.

### **John Lepper Builds the Treehouse to Keep the Children Safe**

12. Plaintiffs were concerned over their safety relating to the discovery of the hypodermic needle. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 99–100:12–14, 2–5; Plaintiffs’

Exhibit 38, Deposition of John Lepper 289:9–20; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶¶ 2-4.

13. Plaintiffs, specifically John Lepper, built a treehouse (“Lepper Family Treehouse”) because of the hypodermic needle found at the Subject Property. Noelle Lepper Deposition, 184:14–24, 256:5–13; Plaintiffs’ Exhibit 41, Stephen Fellman Deposition, 232:8–19; Plaintiffs’ Exhibit 38, Deposition of John Lepper 291:8–14.
14. Plaintiffs believe the Lepper Family Treehouse complies with the Village of Babylon code. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 261–262:23–25:2–10; Plaintiffs’ Exhibit 43, Gerard Glass Deposition, 182:12–22; Plaintiffs’ Exhibit 38, Deposition of John Lepper 372:4–15.
15. Plaintiffs built the treehouse to protect their children. Plaintiffs’ Exhibit 38, Deposition of John Lepper 99:10–19, see 421:14–21; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶¶ 2-4.
16. Plaintiffs did not believe that signed sealed plans were required to build a child’s treehouse. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 268:10–25; Plaintiffs’ Exhibit 38, Deposition of John Lepper 372:4–15.
17. Plaintiffs did not believe that a permit was required to build a child’s treehouse. Plaintiffs’ Exhibit 38, Deposition of John Lepper 389:4–6.
18. Measurements were taken by John Lepper and an Architect to comply with the Village of Babylon Code. Plaintiffs’ Exhibit 42, Noelle Lepper Deposition, 265:3–15; Plaintiffs’ Exhibit 43, Gerard Glass Deposition, 182:12–22; Plaintiffs’ Exhibit 38, Deposition of John Lepper 372:4–15, cf. 250:10–18.

19. The Lepper Family Treehouse is not complete. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 59:16–21, 60:5–21; Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, see 87:7–13, 86:23–25.
20. The Lepper Family Treehouse was not completed because Defendants demanded that John Lepper stop working on the Lepper Family Treehouse. Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, 390–393.
21. The Plaintiff–children are aware that the Lepper Family Treehouse is not complete. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 213–14:11–25:2–4; Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, pp. 390–393.
22. The Plaintiff children ask nearly every day when they can utilize the Lepper Family Treehouse. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 214:5–11; see also Plaintiffs' Exhibit 38, Deposition of John Lepper 419–420:5–5.
23. Defendant Anthony Davida made complaints about the Lepper Family Treehouse. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 135:22–25, 167:4–11.
24. Plaintiffs' neighbors Tony Kinnier, called Defendant Mayor Ralph Scordino regarding John Lepper. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 237:16–18; Plaintiffs' Exhibit 38, Deposition of John Lepper 364:4–17.
25. Defendant Stephen Fellman stated that he did not like the treehouse. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 267:14–20.
26. Decedent–Defendant Mayor Ralph Scordino spoke with residents concerning the Lepper Family Treehouse. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 228:3–7; Plaintiffs'

Exhibit 38, Deposition of John Lepper 308:22–11, 309:18–24, 310:10–13.

27. John Lepper was told to stop working on the Lepper Family by persons working for the Village of Babylon. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 219:14–23 (ability to issue a stop work order); Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, pp. 390–393
28. John Lepper wanted to “build a hatch for the kids to be able to climb up to” the Lepper Family Treehouse.” Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 62:7–12; Plaintiffs' Exhibit 38, Deposition of John Lepper 87:7–13.
29. John Lepper did not complete the windows on the Lepper Family Treehouse. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 62:7–12; Plaintiffs' Exhibit 38, Deposition of John Lepper 87:7–13.
30. Children who utilized the Lepper Family Treehouse were supervised by Noelle Lepper. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 67:2–12.

**The Village of Babylon Officials knew of the Drug Problem and Plaintiffs' outspoken views about the Drug Problem**

31. Plaintiff John Lepper called the police and notified his neighbors regarding illegal drug use in the neighborhood. Plaintiffs' Exhibit 38, Deposition of John Lepper 208:4–9, pp. 209–211.
32. Plaintiff John Lepper created a treehouse for the children as an expression of his concern over the opioid crisis and the lack of any attention, concern, or response by the Administration of the Village of Babylon. Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 4.

33. Village of Babylon officials, inclusive of the named Defendants, were aware of the drug problem surrounding the Subject Property. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 256–257, 258:2–17; Plaintiffs' Exhibit 43, Gerard Glass Deposition, 186:10–16; Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 133:6–10, 300:22–25, 301:2–5; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 13-15.
34. Decedent–Defendant Mayor Ralph Scordino acknowledged that there is an opioid epidemic for which he applied for a license to carry a weapon. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 133:15–23.
35. Decedent–Defendant Mayor Ralph Scordino spoke to many neighbors concerning the drug problem and in support of John Lepper. Plaintiffs' Exhibit 38, Deposition of John Lepper 308–310, 310:10–13 (noting 50 people who signed a petition on John Lepper's behalf).
36. Decedent–Defendant Mayor Ralph Scordino knew that a house on the next street, a block away on Wyandanch Avenue in the Village of Babylon, was raided for drugs by law enforcement where a gun was recovered. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 300–301:22–25, 8–16, 302:2–3, 316:7–12; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.
37. Defendant Village of Babylon Trustee Anthony Davida lives on 83 Wyandanch Avenue, Village of Babylon, County of Suffolk, State of New York since 1961. Plaintiffs' Exhibit 28, Anthony Davida Deposition, 30:22–24, 31:3–4, 69:12–15.
38. Defendant Village of Babylon Trustee Anthony Davida swears he has not seen any other treehouse in the Village of Babylon before John Lepper's. Plaintiffs' Exhibit 28, Anthony



Davida Deposition, 62:14–20; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 15.

39. Defendant Village of Babylon Trustee Anthony Davida swore that he never saw a treehouse in the Village of Babylon other than the Lepper Family Treehouse that is the subject of this litigation. Plaintiffs’ Exhibit 28, Anthony Davida Deposition, 65:6–10, 66:8–13; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶¶ 14-15.
40. Defendants knew that Plaintiffs’ neighbor’s house was raided for drugs, the same house that had a large elevated structure/playhouse adjoining the property line, but claim that they had no idea that such structure had no building permit. Plaintiffs’ Exhibit 37, Ralph Scordino Deposition, 300, 303:19–25, 304:2–7; Plaintiffs’ Exhibit 38, Deposition of John Lepper 346:16, 347:16, pp. 350–351, 364:4–17; see also Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 14-15.
41. Defendant Anthony Davida claims he was shocked when he saw the framework of the Lepper Family Treehouse but claims to not know about his neighbor’s elevated structure/playhouse adjoining the property line. Plaintiffs’ Exhibit 28, Anthony Davida Deposition, 75:12–20, 80:13–25, 82:4–15; see Plaintiffs’ Exhibit 38, Deposition of John Lepper 346:16, 347:16; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 15; Plaintiffs’ Exhibit 46.
42. Defendant Mayor Ralph Scordino testified that the next-door neighbor to a house raided for drugs which had a large, elevated structure/playhouse was the same Anthony Davida who reported timbers in a tree at the Lepper Property. Plaintiffs’ Exhibit 37, Ralph Scordino Deposition, 316:17–25, 317:10–19; see Plaintiffs’ Exhibit 38, Deposition of John Lepper 337:16–20, pp. 338–339.

43. Defendant Anthony Davida swore he was able to see there was no building permit in the front of Plaintiffs' window upon witnessing timbers in a tree at the Subject Property but did not notice the elevated structure down the block from his home on Wyandanch, Village of Babylon, County of Suffolk, State of New York. (Plaintiffs' Exhibit 28, Anthony Davida Deposition, 148:2–15, 149:17–25; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 14-15.
44. Although decedent–Defendant Mayor Ralph Scordino told code enforcement about the house raided for drugs which had a large elevated structure/playhouse next door to Defendant Anthony Davida, no summons was issued for the failure to obtain a building permit like the Lepper Family Treehouse. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 317:10–19; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.
45. The decedent–Defendant Mayor Ralph Scordino had recently obtained a permit to carry a weapon because of people that come into the Village of Babylon on drugs or liquor. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 130:5–18.
46. Noelle Lepper spoke with many people within the Village of Babylon about the drug issues and Lepper Family Treehouse. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 252–253:14–25:2–8.
47. John Lepper spoke with a great many people within the Village of Babylon about the drug issues and Lepper Family Treehouse. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 253–254:9–25:2–5; Plaintiffs' Exhibit 38, Deposition of John Lepper 206:5–14; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 4.

48. The Defendants Village of Babylon was not happy that John and Noelle Lepper were talking about a drug problem in the Village of Babylon. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 255:7–18, 256:5–13.
49. The Defendants met prior to issuing the summons against John Lepper. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 199:15–25, 200:2–5.
50. Plaintiff John Lepper made Defendants aware of the drug problem prior to the issuing of summons against John Lepper. Plaintiffs' Exhibit 38, Deposition of John Lepper 217–218:18–25.
51. Plaintiff John Lepper had conversations with persons within the Defendant Village of Babylon Building Department about finding a hypodermic needle prior to the Defendants issuing summons against John Lepper. Plaintiffs' Exhibit 38, Deposition of John Lepper pp. 229–230, 235:9–21.
52. Decedent–Defendant Mayor Ralph Scordino provided sworn testimony that he “made the determination by visually looking at it and passed the information over to the Building Department. You would have to be an idiot not to realize that there is safety issues with that tree house.” Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 343–344:25, 1–11; see also Plaintiffs' Exhibit 28, Anthony Davida Deposition, 190:14–22, 191:5–10.
53. Defendant Stephen Fellman was required to report to the Mayor and the four trustees in the Village of Babylon. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 116:9–22.
54. Defendants, knew that a school bus stop near Plaintiffs' property had to be moved because of drugs. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 304–305:18–25, 7–16, 307:12–

19; Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, see 212:24–214:15; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.

55. Defendants, knew that one of the properties near the Subject Property for which there is drug activity has a treehouse. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 313:16–25; Plaintiffs' Exhibit 38, Deposition of John Lepper pp. 350–351, 347:2–16; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.

**John Lepper submitted a permit application**

56. John Lepper submitted a permit application as he was told by the Village of Babylon Defendants. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 269:13–24; Plaintiffs' Exhibit 38, Deposition of John Lepper 81–82:22–6, 203:5–16, pp. 243–244 (detailing conversation before submission), 269:19–2, 270:3–21 (noting that it was deemed acceptable by Village of Babylon Building Department); Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 9-23.

57. Plaintiff John Lepper submitted a building permit with the elevation drawing and survey. Plaintiffs' Exhibit 38, Deposition of John Lepper 93:15–22.

58. Plaintiff John Lepper's building permit application was reviewed and accepted by the Defendant Village of Babylon Defendants without stating the need for architectural drawings. Plaintiffs' Exhibit 38, Deposition of John Lepper 241:5–19; see *id.* 243–244; see also Plaintiffs' Exhibits 9–13 (other treehouses that submitted substantially the same or less quality drawings for already-completed treehouses).

59. Defendants knew that the Lepper Family Treehouse was reported to be under 90 square feet and that it would not

require a permit. Plaintiffs' Exhibit 28, Anthony Davida Deposition, 157:14–23, 158:3–11; Plaintiffs' Exhibit 38, Deposition of John Lepper 372:4–15, 81:22–82:20; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 41.

60. Holly Zappalla was aware of the Hypodermic Needle found the bushes of the Subject Property. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 250:9–25, 251:9–19; Plaintiffs' Exhibit 38, Deposition of John Lepper pp. 229–230, 236–240; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.

61. Holly Zappalla stated that she was aware of Plaintiffs' neighbor with a drug problem and that is from where the hypodermic needle found on the Subject Property may have come. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 251–252:20–25:2–5; Plaintiffs' Exhibit 38, Deposition of John Lepper 235:9–21; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.

62. Defendants Deborah Longo and Stephen Fellman were persons inside the building department responsible for speaking to John Lepper and taking paperwork regarding a permit for the Lepper Family Treehouse. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 129:14–17; Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 199:15–25; Plaintiffs' Exhibit 28, Anthony Davida Deposition, 159:2–25; Plaintiffs' Exhibit 38, Deposition of John Lepper 239:23–240:6.

63. Prior to submitting a Building Permit Application to the Defendants, John Lepper received instructions from the Village of Babylon Building Department. Plaintiffs' Exhibit 38, Deposition of John Lepper 275:13–20; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 9-13.

64. The Building Permit Application submitted by John Lepper to Defendants was sufficient and a permit could be issued based on what John Lepper submitted. Plaintiffs' Exhibits 4 and 38, Deposition of John Lepper 269:19–2–270:3–21; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 12, 22.
65. John Lepper called the Village of Babylon Building Department in June 2018, after submitting the Building Permit Application (see Plaintiffs' Exhibits 3, 4) to Defendants. Plaintiffs' Exhibit 38, Deposition of John Lepper 93–94:23–7; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 16.
66. John Lepper did not receive a response to the status check of his permit application from the Village of Babylon prior to the issuance of tickets. Plaintiffs' Exhibit 38, Deposition of John Lepper 203:5–205:16; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 17.
67. John Lepper called the Village of Babylon more than once to check on the status of the permit application prior to the issuance of tickets. Plaintiffs' Exhibit 38, Deposition of John Lepper 283:3–17; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 16–17.
68. Defendant Deborah Longo determined that John Lepper did not follow through and a notice of violation and summons were sent to John Lepper over the Lepper Family Treehouse. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 168:16–23; 168–169 (noting Ms. Longo's troubled memory as to these events), see Plaintiffs' Exhibit 38, Deposition of John Lepper 239:23–240:6.
69. Defendant Deborah Longo was appointed by and reported to decedent—Defendant Mayor Ralph Scordino.

Plaintiffs' Exhibit 28, Anthony Davida Deposition, 154:4–10, 155:17–19.

**The tickets issued to John Lepper**

70. Defendant Deborah Longo received legal advice from Defendant Gerard Glass regarding the issuance of accusatory instruments to John Lepper over the Lepper Family Treehouse. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 177:16–21; Plaintiffs' Exhibit 36, Deborah Longo Deposition, 228:15–22.
71. Deborah Longo ran the building department at the Village of Babylon throughout the prosecution(s) of John Lepper. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 165–166:22–25, 2–7; Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 199:15–25.
72. Defendant Gerard Glass had the opportunity to review and prepare accusatory instruments as Attorney for the Defendant Village of Babylon. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 111:13–22, 112:14–25.
73. John Lepper did not receive any violation issued from the Village of Babylon until July 19, 2018. Plaintiffs' Exhibit 38, Deposition of John Lepper 280:3–8.
74. Defendant Stephen Fellman demanded amounts of money required from Plaintiff John Lepper as to the tickets he issued for Treehouse – without a permit. Plaintiffs' Exhibit 38, Deposition of John Lepper 248:4–8; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 23.
75. Defendant Stephen Fellman refused to explain the tickets to John Lepper for Treehouse – without a permit aside from admitting that the “mayor’s office received a number of complaints.” Plaintiffs' Exhibit 38, Deposition of John Lepper



249:7–12; 249:20–250:9; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 25.

76. Plaintiff John Lepper had thirty to four neighbors in court supporting him when he plead not guilty to the initial violations he received from the Village of Babylon. Plaintiffs’ Exhibit 38, Deposition of John Lepper 205:2–16; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 34.

### **The Prosecution of John Lepper**

77. John Lepper invited Stephen Fellman to inspect the Lepper Family Treehouse and sought guidance to be in compliance with the purported Village of Babylon Code Violations signed by Stephen Fellman yet Stephen Fellman refused. Plaintiffs’ Exhibit 41, Stephen Fellman Deposition, 163:25, 164:2–3; Plaintiffs’ Exhibit 44, John Lepper Affidavit ¶ 28.
78. John Lepper was subject to possible incarceration if convicted by the Village of Babylon for the tickets issued against him. Plaintiffs’ Exhibit 43, Gerard Glass Deposition, 276:6–12.
79. Decedent–Defendant Mayor Ralph Scordino played golf with the Village of Babylon Justice, sees him every Tuesday and ran on the same political platform with him and all Defendants who are elected officials. Plaintiffs’ Exhibit 37, Ralph Scordino Deposition, 66:21–25, 68:2–17, 165–174, 176:14–19 (communicating with the Judge on a personal level).
80. Defendants Deborah Longo and Stephen Fellman discussed the Lepper Family Treehouse with members of the Village of Babylon Court, Village of Babylon Mayor, Defendant Gerard Glass, Village of Babylon Trustees as well

as the Village of Babylon Zoning Board. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 144:12–24, 146, 20–25, 147:2–12, 147–149, 150:3–19; Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 199:15–25, 201:13–18.

81. No other prosecutions have occurred under Village of Babylon Code Section 365–25 involving a playhouse or a structure in a tree. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 137:2–14, 137:15–22; Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 329:14–18, 330:9–12.
82. Village of Babylon Code Section 365–25 does not mention drawings or engineers. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 232–233:17–25, 2–14.
83. Defendants claim that the Lepper Family Treehouse could not utilize handwritten drawings while other treehouses/playhouse structures within the Village of Babylon received permits long after completion based on the same submissions that John Lepper provided the Village of Babylon. Plaintiffs' Exhibit 28, Anthony Davida Deposition, 159–160:2–25, 2–10; Plaintiffs' Exhibits 9–13 (detailing other treehouses found within the Village of Babylon), Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 63.
84. John Lepper, who was prosecuted by Defendant Gerard Glass, was the only one prosecuted for a Treehouse in the Village of Babylon. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 137–138:22–25:2–14, 281–282:23–25, 2–3.
85. There is no definition of the phrase "outdoor playground" or the word "gym" in the Village of Babylon Code. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 148:19–25.

86. There is no definition or use of the word "treehouse" in the Village of Babylon Code. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 149:5–11.

### **Threats of Daily Fines and Forcible Treehouse Removal**

87. Defendants issued a letter to John Lepper stating that John Lepper could be fined daily. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 202:14–22, 223:14–24; Plaintiffs' Exhibit 38, Deposition of John Lepper 424:6–13, 425:2–18, 426:16–24, 432:12–18.
88. Defendants issued a letter based requiring removal of the treehouse or facing fines on a daily basis prior to allowing John Lepper to appeal Village of Babylon Justice John Rafter's decision. Plaintiffs' Exhibit 38, Deposition of John Lepper 425:2–18.
89. Defendants cited safety as the cause to remove the Lepper Family Treehouse without ever inspecting the treehouse. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 222–223:17–25:2; Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 336–337:20–25, 2–4; Exhibit 28, Anthony Davida Deposition, 190–191:14–22, 5–10; Plaintiffs' Exhibit 38, Deposition of John Lepper 432:12–18, 425:2–18.
90. Defendant Stephen Fellman said that he never made a determination as to the safety of the treehouse at the time but made a determination afterwards. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 146:3–9, 146–147:16–25, 2–5, 148:20–24; cf. Plaintiffs' Exhibit 28, Anthony Davida Deposition, 190–191:14–22, 5–10.
91. Defendants admitted in Federal Court that it would seek to fine John Lepper daily for having a treehouse on his

property. Plaintiffs' Exhibit 38, Deposition of John Lepper 427–428:7–9.

92. Defendants threatened daily fines against Plaintiffs that would consume the value of the property, thus taking the Subject Property. Plaintiffs' Exhibit 38, Deposition of John Lepper 425:2–18, 426:16–24, 432, 20–23 (Plaintiffs' Exhibit 19), 432:12–18.
93. On September 4, 2019, Defendant Stephen Fellman testified that he believes that the Lepper Family Treehouse is safe. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 148:7–19.
94. Defendant Stephen Fellman issued violations to John Lepper on the basis of construction without a building permit. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 149:6–21; Plaintiffs' Exhibit 20 (dismissing the accusatory instruments which recited Treehouse – without a permit); Plaintiffs' Exhibit 38, Deposition of John Lepper 99:10–19, see 249:7–12 (noting lack of explanation).
95. On September 4, 2019, Defendant Stephen Fellman testified that he only knew of the Lepper Family Treehouse and one other. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 158:19–24, 160:9–16, 195:19–25.
96. Defendant Stephen Fellman jobs duties as Building Inspector were to determine that structures were structurally sound to which Mr. Fellman stated to determine “Safety and the building is not gonna collapse and fall down or blow down in a hurricane.” Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 98:24–99:25.
97. Defendants had threatened people with daily fines within the Village of Babylon. Plaintiffs' Exhibit 37, Ralph

Scordino Deposition, 333:21–24; Plaintiffs’ Exhibit 38, Deposition of John Lepper 424:6–13.

98. Defendant Attorney Gerard Glass was familiar with the appeal process from a Village of Babylon Court conviction yet Defendants sent and received letters threatening daily fines and removal of the treehouse to John Lepper. Plaintiffs’ Exhibit 43, Gerard Glass Deposition, 216:5–14, 217, 5–18, 214:8–14, 218:3–25, 242:17–21 (fine amount); see Plaintiffs’ Exhibit 20 (appellate court decision), Plaintiffs’ Exhibits 18–19.

99. The Defendant Village of Babylon Building Inspector has the authority to order the removal of a structure within the Village of Babylon. Plaintiffs’ Exhibit 43, Gerard Glass Deposition, 222:14–20; Plaintiffs’ Exhibit 18.

### **Treehouses within the Village of Babylon**

100. Defendants appear to not recall other treehouses, receiving a litigation hold notice in this matter or complying with the litigation hold notice received in this lawsuit, some unable to remember whether they deleted electronic mailings in this case. Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 62:3–13, 77:14–19, 87:7–14, 88:19–25, 89:2–6, 97:3–8, 17–21 (this lawsuit is a “blip” to her), 162:7–16 (knowing of only two treehouses); Plaintiffs’ Exhibit 41, Stephen Fellman Deposition, 177:15–17, 187:16–22, 188–189:23–25, 2–5; Exhibit 28, Anthony Davida Deposition, 123:16–23. see also, e.g., *id.* 8:15–22, 117:6–7. 118:6–21 (witness swears he doesn’t remember anything).

101. Defendant Building Inspector Stephen Fellman claims to have no knowledge of any other treehouses within the Village of Babylon, County of Suffolk, State of New York aside from

the Baldauf Treehouse and the Lepper Family Treehouse. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 166:2–13.

102. Village of Babylon Defendants are aware of other treehouses within the Village of Babylon. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 258:6–12; Plaintiffs' Exhibits 9–13 (noting other treehouses); Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 63.

103. Noelle Lepper was able to observe a raised structure on neighboring property from the ground on her own property. Plaintiffs' Exhibit 42, Noelle Lepper Deposition, 229:14–25, 230, 8–24; Plaintiffs' Exhibit 38, Deposition of John Lepper 346:16–347:16; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14.

104. Defendant Stephen Fellman did a spot load and visual inspection of the only other Treehouse before issuing it a Certificate of Occupancy within the Village of Babylon, County of Suffolk, State of New York. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 165:5–13; see, potentially, Exhibits 9–13 (noting other Village of Babylon Treehouses not produced throughout this litigation).

105. Defendant Stephen Fellman was prosecuted for Civil Rights violations by the United States government. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 171:4–7, 175:16–22.

#### **Letter from the Mayor about Treehouses and Other Things**

106. All the Village of Babylon Defendants named herein answered to the Defendant Mayor Ralph Scordino, at all times relevant in the Amended Consolidated Complaint. Plaintiffs' Exhibit 36, Deborah Longo Deposition, 23:6–11; Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 234:10–16.

107. Decedent–Defendant Mayor Ralph Scordino sends a letter to the Village of Babylon residents concerning the Village of Babylon three or four times a year. Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 231:3–8; Plaintiffs’ Exhibit 37, Ralph Scordino Deposition, 146:9–21, 148:15–23; Exhibit 28, Anthony Davida Deposition, 171:16–22, 192:18–24.
108. Everyone in the Village of Babylon received a letter in the office from the Mayor about the Treehouse among other things during the Christmas holidays of 2018. Exhibit 28, Anthony Davida Deposition, 172:3–18, 173:18–23.
109. The Defendant Mayor Ralph Scordino distributed a letter about treehouses among other things to Defendants for their approval. Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 219:12–22.
110. The named Defendants agreed with Defendant Mayor Ralph Scordino’s letter and the issuance of tickets against Plaintiff John Lepper over the Lepper children’s treehouse. Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 211:20–25; Exhibit 28, Anthony Davida Deposition, 115–116.
111. Defendant Stephen Fellman did not inspect the Lepper Family Treehouse. Plaintiffs’ Exhibit 36, Deborah Longo Deposition, 213:8–20; Plaintiffs’ Exhibit 41, Stephen Fellman Deposition, 160:23–25.

### **Building Permit Application**

112. Defendants only had one permit application for a treehouse in the Village of Babylon. Plaintiffs’ Exhibit 41, Stephen Fellman Deposition, 161–162:24–25, 2–3.



113. Defendants were aware of completed treehouses without a permit prior to the prosecution of John Lepper. Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 14, see also *id.* at ¶ 63.
114. Plaintiff John Lepper submitted a building permit to the Village of Babylon once he received a letter stating that a permit may be required. Plaintiffs' Exhibit 38, Deposition of John Lepper 282:9–18; see Plaintiffs' Exhibits 3, 4.
115. Defendants claim a physical inspection was required for a Certificate of Occupancy and yet claim only one inspection of a Treehouse ever occurred within the Village of Babylon. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 162–163:19–22, 3–24; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 63.
116. Defendant Anthony Davida swore during a deposition that the Village of Babylon Building Inspector did a safety inspection on the Lepper Family Treehouse. Exhibit 28, Anthony Davida Deposition, 188–19:19–25, 2–12.
117. Plaintiff John Lepper swore during a deposition that the Village of Babylon Building Inspector refused to examine the Lepper Family Treehouse or explain the violations. Plaintiffs' Exhibit 38, Deposition of John Lepper 249:20–250:9.
118. Defendant Stephen Fellman, who answered to Defendant Mayor Scordino during the prosecution(s) of John Lepper, is the person who makes the determination as to whether an application for a building permit is complete within the Village of Babylon. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 199:6–14; Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 224:20–22; Exhibit 28, Anthony Davida Deposition, 159:14–25.

119. Defendant Gerard Glass was present in the United States District Court when then USDJ Joseph F. Bianco suggested that the Lepper family submit a survey and engineer's report to the Defendant Village of Babylon and Defendants did receive those items. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 237:4–23.

### **First Amendment Retaliation**

120. John Lepper spoke out against the illegal drug use in the Village of Babylon. Plaintiffs' Exhibit 38, Deposition of John Lepper 179:16–180:7, 181:2–5, pp. 194–198; 326:5–9; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 4.

121. John Lepper spoke to his neighbors who spoke to, among others, the decedent–Defendant Mayor Ralph Scordino about the Lepper Family Treehouse and illegal drugs in the Village of Babylon. Plaintiffs' Exhibit 38, Deposition of John Lepper 179:16–180:7, 190:12–23, pp. 196–198, 309:18–310:13; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 34.

122. John Lepper spoke out against illegal drug use in the Village of Babylon prior to being issued violations by Defendants. Plaintiffs' Exhibit 38, Deposition of John Lepper 217:18–25; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 13-14.

123. John Lepper spoke out against illegal drug use in the Village of Babylon prior to his first court date. Plaintiffs' Exhibit 38, Deposition of John Lepper 192:24–193:5; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 4, 12-14.

124. Defendant Gerard Glass told John Lepper to make a case about the illegal drug use he reported to Defendant Glass, as Village of Babylon Attorney, and John Lepper

refused. Plaintiffs' Exhibit 38, Deposition of John Lepper 201:9–16.

125. John Lepper reported violations of his rights to various news media. Plaintiffs' Exhibit 38, Deposition of John Lepper 160:6–12, pp. 160–163, 162:12–15, 164:2–11.

126. John Lepper reported what he perceived as unfair treatment to locally elected officials, see Plaintiffs' Exhibit 22, and was subject to retaliation by the Defendants in the form of tickets on Halloween in front of his kids. Plaintiffs' Exhibit 38, Deposition of John Lepper 107:7–17; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 55.

127. John Lepper reported unfair treatment and a violation of his rights various press outlets after receiving tickets on Halloween in front of his kids. Plaintiffs' Exhibit 38, Deposition of John Lepper 164:2–11, 172:4–10, P.174:3–12.

128. John Lepper spoke out publicly against the Village of Babylon Defendants. Plaintiffs' Exhibit 38, Deposition of John Lepper 326:5–9, 327:8–16, 355:22–356:2; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶ 34 (neighbors in support of John Lepper coming to Court on his behalf).

129. The Village of Babylon Judge Rafter did voice his disapproval with John Lepper speaking to the press and Congressman King. Plaintiffs' Exhibit 38, Deposition of John Lepper 112:2–25.

130. The Village of Babylon Judge Rafter's wife works with the complainant to decedent–Defendant Mayor Ralph Scordino about the Lepper Family Treehouse. Plaintiffs' Exhibit 38, Deposition of John Lepper 373:7–14, P.376:8–16, P.377:3–12.

131. Defendants sought to harm John Lepper for speaking to the press. See Plaintiffs' Exhibit 20.
132. John Lepper displayed signage about illegal drug activity, the needle he found in the bushes and the square footage of the Lepper Family Treehouse at the Subject Property. Plaintiffs' Exhibit 38, Deposition of John Lepper 378:8–20.
133. John Lepper supported candidates who ran against the named Defendants. Plaintiffs' Exhibit 38, Deposition of John Lepper 383:4–22.
134. John Lepper was outspoken about the Heroin problem, issues of safety and Defendants were aware that John Lepper went on social media and contacted the news media to, among other things, voice his belief that his rights were being violated. Plaintiffs' Exhibit 28, Anthony Davida Deposition, 186:4–25; Plaintiffs' Exhibit 38, Deposition of John Lepper 112:2–25; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 4, 34.
135. Defendants sought constant updates from Defendant Stephen Fellman and spoke about the Lepper Family Treehouse after its construction. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 212–214:25–17; Exhibit 28, Anthony Davida Deposition, 114:4–24, 115:9–17.

### **Animus and Retaliation against John Lepper**

136. Defendants fought very hard and spent a lot of money in federal court because Defendants felt that a heroin recovery office was not part of the quality of life in the Village of Babylon. Plaintiffs' Exhibit 37, Ralph Scordino Deposition, 339:2–10, 13–20.

137. Defendant Gerard Glass did render legal advice in connection with the Lepper Family Treehouse to the Village of Babylon Defendants. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 173–174:16–25:2.
138. Defendant Gerard Glass did render legal advice to Village of Babylon Defendants prior to the issuance of the accusatory instruments to John Lepper. Plaintiffs' Exhibit 43, Gerard Glass Deposition, 177:6–15; Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 217:2–11.
139. Defendants, with the advice of an attorney, issued John Lepper tickets for Village of Babylon violations, stating Treehouse – without a permit, and never charged variance, safety or any of the new issues raised after the commencement of this federal action. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 220–222:21–23; Plaintiffs' Exhibit 20.
140. Defendant Gerard Glass did have a financial incentive to continue to prosecute John Lepper. Plaintiffs' Exhibit 45; Plaintiffs' Exhibit 38, Deposition of John Lepper 331:16–332:3.
141. John Lepper spoke out and publicly protested the monies Defendant Gerard Glass received for legal services related to a Treehouse. Plaintiffs' Exhibit 38, Deposition of John Lepper 329:10–21, 331:16–332:3.
142. Defendant Anthony Davida did not respond to John Lepper's public inquiries as to why the bus stop was moved or drugs in the Village of Babylon at a public hearing. Plaintiffs' Exhibit 38, Deposition of John Lepper 337:2–20; Plaintiffs' Exhibit 44, John Lepper Affidavit ¶¶ 13-15.

## **The Lepper Family Treehouse is safe**

143. Defendant Stephen Fellman is aware of the very large storm that hit the Village of Babylon after the Lepper Family Treehouse was built. Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 98–99:24–25, 9–19.
144. James Brown, a licensed professional engineer, found that the Lepper Family Treehouse was safe. Plaintiffs' Exhibits 7, 8; see also D.E. 29–2.
145. After a very large storm brought a lot of trees down in the Village of Babylon, the Lepper Family Treehouse did not come down. Exhibit 28, Anthony Davida Deposition, 120:6–25.

DATED AT Melville, New York  
July 15, 2021

/S/

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2:18-cv-07011-JMA-AYS | 2:21-cv-00014-JMA-AYS

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**United States District Court**  
*for the*  
**Eastern District of New York**

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**JOHN LEPPER and NOELLE LEPPER**, individually and as parents and natural guardians of their infant children,  
**B.J.L. AND B.I.,,**

*Plaintiffs*

–v–

**VILLAGE OF BABYLON**; and  
**ESTATE OF RALPH SCORDINO**, Mayor-decedent, **KEVIN MULDOWNEY**, current/former Deputy Mayor, **ROBYN SILVESTRI**, current/former Village Trustee, **TONY DAVIDA**, current/former Village Trustee, **MARY ADAMS**, current/former Village Trustee and acting Mayor; **STEPHEN FELLMAN**, Village of Babylon Building Inspector; **SUZANNE SCHETTINO**, Department of Public Works; **GERARD GLASS**, Esq., current/former Village of Babylon Attorney; **DEBORAH LONGO**, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants,

*Defendants*

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**PLAINTIFFS' ATTORNEY'S DECLARATION OPPOSING  
DEFENDANTS' REQUEST FOR SUMMARY JUDGMENT**

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**LAW OFFICE OF CORY H. MORRIS**

*Attorney for Plaintiffs*

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VICTOR JOHN YANNAcone, JR., *of counsel*

[barrister@yannalaw.com](mailto:barrister@yannalaw.com)

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I, Cory Morris, an attorney duly licensed to practice law in the State of New York and admitted to practice in the Eastern District of New York, declare under the penalties of perjury pursuant to 28 U.S.C. §1746, that the following statements are true and correct, to the best of my knowledge:

1. I am the counsel of record for Plaintiffs, John and Noelle Lepper as well as their infant children.
2. I represented and still represent John Lepper in the Village of Babylon Justice Court and the Appellate Term where Mr. Lepper has become the focus of successive prosecutions because he erected a treehouse for his children over three years ago.

### **PRELIMINARY STATEMENT**

3. The Defendants seem to have lost sight of the fact that on their Motion for Summary Judgment, they have the burden of establishing by substantial credible admissible evidence that there are no triable issues of fact which would prevent entry of summary judgment against the plaintiffs.
4. According to Local Rule 56.1 and the Individual Practice Rules of USDJ Azrack, Defendants are supposed to present a statement of uncontroverted facts supported by references to substantial credible admissible evidence identified with particularity.
5. The Defendants as the moving party on this Motion for Summary Judgment have failed to support their allegations of allegedly undisputed facts with references to admissible evidence.
6. Defendants referred to general affidavits without any reference to specific paragraphs in those affidavits to support facts which are controverted by the Plaintiffs and, worse, seem to reference items (i.e. other treehouse) not produced in

discovery, see *infra* ¶¶ 39-43, or for which Defendants previously controvert during their depositions.

7. Along with withholding evidence, Defendants raise almost insurmountable barriers to a proper response by the Plaintiffs since there are very few specific references to allegedly admissible evidence supporting the statements alleged in defendants' Rule 56.1 Statement as undisputed facts.
8. Nevertheless, Plaintiffs address the issues raised by those alleged uncontroverted statements of fact and establish clearly through affidavits by individuals with personal knowledge of the facts and uncontroverted documentary evidence that triable issues of fact exist sufficient to preclude any possible grant of summary judgment in favor of the Defendants.

**DEFENDANTS HAVE NOT COMPLIED WITH RELEVANT  
AND MATERIAL DISCOVERY REQUESTS**

9. Summary Judgment should not be granted to the Defendants in this action because Defendants have willfully chosen to deny discovery materials which are “germane to the defense, and that it is neither cumulative nor speculative...,” *Alphonse Hotel Corp. v. Tran*, 828 F.3d 146, 151 (2d Cir. 2016) (quoting *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1138 (2d Cir. 1994)), including but not limited to Defendants’ communications and other Village of Babylon treehouses.
10. In this case, Defendants refuse to even produce a copy of the Defendant Mayor’s Death Certificate nonetheless the myriad of other treehouses for which Defendants provided sworn testimony of living in the Village of Babylon for decades yet knowing absolutely nothing about.
11. In opposing a summary judgment motion, if a nonmovant “shows by affidavit or declaration that, for specified reasons,

it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d).

12. John Lepper served a Litigation Hold Notice upon all parties involved in this litigation. See *infra*, Plaintiffs' Exhibit 30.
13. Defendants have totally ignored the Litigation Hold Notice and failed to identify, much less produce, a substantial body of communications which certain Defendants have admitted during their depositions does exist. See *infra*, ¶¶ 39-43, Plaintiffs' Exhibit 36, Deborah Longo Deposition, 62:3-13, 77:14-19, 87:7-14, 88:19-25, 89:2-6, 97:3-8, 17-21 (this lawsuit is a "blip" to her), 162:7-16 (knowing of only two treehouses); Plaintiffs' Exhibit 41, Stephen Fellman Deposition, 177:15-17, 187:16-22, 188-189:23-25, 2-5; Exhibit 28, Anthony Davida Deposition, 123:16-23; see also, e.g., *id.* 8:15-22, 117:6-7. 118:6-21 (witness swears he does not remember anything).
14. Plaintiff's claim that those emails contain material substantial credible admissible evidence clearly establishing plaintiffs' claims of First Amendment retaliation; the threat of excessive fines in violation of the Eighth Amendment; denial of equal protection and conspiracy to deny equal protection under the Fifth and 14th Amendments; substantive due process; attempts to take private property without due process of law in violation of the Fifth Amendment; and most important evidence which will establish the existence of a conspiracy to deprive the Plaintiffs of their constitutional rights in violation of 42 USC §1983.

15. Further, Defendants sought to intimidate John Lepper, literally seeking to have arrested (see *infra* Plaintiffs' Exhibit 35, Affidavit of Charlie Lepper) and harm his employment with The Fire Department of New York City. See *infra*, Plaintiffs' Exhibit 38, ¶¶ 55–60.
16. Defendants' retaliation against John Lepper, which did not mean that the Plaintiffs in this action withdrew their lawsuit or will not suffer damages if their treehouse is destroyed, resulted in a second filing that this Honorable Court Ordered Consolidated.
17. Defendants refused to timely (or at all) provide communications or produced witnesses for deposition who had no recollection of relevant and material communications they should have identified and had available subject to the Litigation Hold Notice. For example the testimony of Mayor Ralph Scordino,

Q. Mayor, [did you] ever communicate with over e-mail regarding the tree house?

A. I would have to refresh [my] memory and look at e-mails.

Q. How?

A. I would have to look at e-mails.

Q. Do you have the e-mails with you?

A. Of course not.

Q. Do you have access to your electronic mail through your phone?

A. No.

Plaintiffs' Exhibit 37, Ralph Scordino Deposition, pp. 40–45, 49:4–13, 57:5–19 (sudden recollection of using a "[bluefin1](#)" e-mail address after equivocating for nearly twenty pages of testimony);

Q. Ms. Longo, any other notes like that that haven't been produced?

A. No. I didn't know I had to, it's a marble notebook.

Q. Because nobody told you, right?

A. No.

Q. No lawyer told you to preserve it, right?

MR. TOSCA: Objection. Don't answer the question. [referring to Counsel for Plaintiffs] You can stare all day if you want, but why are you staring?

Plaintiffs' Exhibit 36, Deborah Longo Deposition, 120:13–24 (external quotation marks omitted).110:25–25, 111:2–10 (emphasis added and external quotation marks omitted); see also *id.* at pp 110–113, generally, *id.* at 152:5–16, 153:3–16

18. Counsel for Defendants often instructed witnesses at depositions not to answer questions, for example:

Q. Has anyone told you to say you that you don't recall?

MR. TOSCA: Objection. Don't answer the question." *Id.* at 130:2–5.

19. Hours into the deposition of Defendant Deborah Longo after she stated over and over again that she did not remember anything, she suddenly recalled that she spoke to persons, like her family, about the treehouse and the "fireman break[ing] balls" *Id.* 194:9–25, 232:17–23.

20. Without any recollection, or production of the electronic mailings, it was particularly troublesome for the witnesses offered by the Defendants in an effort to delay the deposition of the Defendant Mayor to then admit she communicates with Defendant Building Inspector Stephen Fellman by electronic mail. *Id.* 130:6–23.

21. Defendants have refused to provide discovery necessary for a dispositive motion. *Villante v. Dept. of Corrections of City of New York*, 786 F.2d 516 (2d Cir. 1986).

22. Indeed, "Where the plaintiff's claim could only succeed upon a showing of actual or constructive knowledge on the part of

supervisory personnel and where facts solely in the defendants' control were therefore at the heart of the necessary proof, the district court's failure to order compliance with the plaintiff's request for deposition discovery was an especially crippling blow." *Id.* (citing *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith*, 756 F.2d 230, 236–37 (2d Cir.1985)).

23. Accordingly, Defendants' dispositive motions should be denied and this matter should proceed to a jury trial together with all other relief this court deems just and proper.

**DEFENDANTS' ALLEGED LACK OF NOTICE, DENIAL OF THE  
ABILITY TO NAME THE ESTATE OF RALPH SCORDINO,  
CLAIMS OF REQUIRING ADDITIONAL DISCOVERY AND  
SANCTIONS SHOULD BE DENIED**

24. Defendants decry several procedural hurdles without mentioning Defendants' stipulation (D.E. 20) and waivers to allow for their late answer including the Defendants' failure to properly notice in the first instance or engage in a proper Gen. Mun. Law § 50-H hearing in a contentious litigation for which Defendants sought the deposition of a five and seven year old child, the undersigned attorney and had the opportunity to question Plaintiff John and Noelle Lepper in excess of seven (7) hours each in the initial action.
25. Prior to Your Honor's consolidation of this matter, USDJ Brian M. Cogan sought to have a hearing under the filing docketed under 2:21-cv-00014 for which John Lepper and the undersigned provided notice to the Defendants who now seek dismissal based upon service of the consolidated matter as alleged in Defendants' boilerplate affidavits.
26. On January 14, 2021, This Honorable Court Ordered that "Defendants are directed to file an answer to the complaint filed in 2:21-cv-00014 by January 25, 2021. The Court stays



any motion practice regarding the complaint until the Court directs otherwise” for which the undersigned sought to name the Estate of Defendant Ralph Scordino to no avail.

27. On January 27, 2021 The undersigned was required to file a Rule 11 Safe Harbor Letter as defense counsel Eric Tosca simultaneously claimed he did not represent the decedent-Defendant Mayor Ralph Scordino yet objected, refused to provide proof of his death and sought dismissal of the lawsuit against the decedent in this action. See D.E. 99.
28. As Defendants acknowledge receipt, hence notice, of the Court Ordered Consolidation (for which neither party raised objection), the Consolidated Complaint filed as per Court Order, the Defendants cannot be heard now to complain of service of process nevertheless state that the Plaintiffs should be precluded from engaging in motion practice to serve the name Defendants, inclusive of the decedent-Defendant Ralph Scordino’s estate. See Fed. R. Civ. P. 4(m).
29. Plaintiffs have been diligent in naming the Estate of Ralph Scordino (for which Your Honor has stayed motion practice) and serving all parties the initial filing in this consolidated action, the latest of Plaintiffs’ efforts being blocked by Patrick McCormick, Esq., who seeks a protective order in order to obtain proof of the decedent’s death, a necessary item for starting the estate which will allow, among other things, Plaintiffs to serve this action upon all parties inclusive of the decedent-Defendant Mayor who sought John Lepper’s arrest.
30. For the foregoing reasons, not only are Plaintiffs acting in good faith in light of the ongoing retaliation suffered by John Lepper and Defendants’ ardent refusal to provide the most basic items required of them in federal litigation but Defendants’ claims for additional discovery, sanctions and

dismissal on procedural grounds including service of process should be denied.

### **EVIDENCE SUBMITTED OPPOSING DEFENDANTS' MOTION**

31. Annexed hereto is a true and accurate copy of records concerning the Baldauf treehouse located at 50 Thompson Avenue, Village of Babylon, New York, designated **Exhibit "1"**.
32. Annexed hereto is a true and accurate copy of a May 10, 2018 letter from Defendant Stephen Fellman stating that "It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit," designated **Exhibit "2"**.
33. Annexed hereto is a true and accurate copy of a building permit application submitted by John Lepper on May, 2018, and marked received by Village of Babylon Defendants, designated **Exhibit "3"**.
34. Annexed hereto is a true and accurate copy of a building permit application submitted by John Lepper marked received May 21, 2018 by Village of Babylon Defendants, complete with survey and drawing plans, designated **Exhibit "4"**.
35. Annexed hereto is a true and accurate copy of a photograph showing the property line and sidewalk adjoining the Plaintiffs' treehouse designated **Exhibit "5"**.
36. Annexed hereto is a true and accurate copy of a photograph showing the property line and sidewalk adjoining the Plaintiffs' treehouse designated **Exhibit "6"**.
37. Annexed hereto is a true and accurate copy of a report by James Brown, a New York licensed Professional Engineer dated and sealed on March 1, 2019 designated **Exhibit "7"**

referring to a Village of Babylon permit application, survey and architectural drawing stating, *in toto*, that

Per the request and direction of Judge Bianco I am providing certification as follows: Based on my structural inspection of the treehouse structure in its current form, I find that the treehouse structure supported in the tree is structurally stable and meets code loadings for wind, snow and LL as prescribed by IBC and local requirements. In other words the structure is able to withstand all weather-related events that are in accordance with code-induced loading criteria.

Exhibit “7” (external quotation marks omitted); see also D.E. 36, uploaded in Docket 18-cv-7011.

38. Annexed hereto is a true and accurate copy of notes taken by James Brown Phd, PE, N.Y. Professional Engineer, regarding the Plaintiffs’ treehouse, designated **Exhibit “8”**; see also D.E. 29-2 uploaded in Docket 18-cv-7011.
39. Annexed hereto is a true and accurate copy of records received through a Freedom of Information Law (“FOIL”) Request detailing a treehouse built decades ago at 250 Fire Island Avenue, Village of Babylon, New York, where Defendant Stephen Fellman issued a Certificate of Occupancy after the homeowner filed an application for a building permit after receiving a letter designated **Exhibit “9”** from Defendant Stephen Fellman on or about May 28, 2020 stating that, “It has come to our attention, that there is a ‘play house’ structure In your yard that was built without a permit.”
40. Annexed hereto is a true and accurate copy of photographs of a treehouse at 250 Fire Island Avenue, Village of Babylon that Mr. Lepper had the opportunity to personally inspect, designated as **Exhibit “10”**.

41. Annexed hereto is a true and accurate copy of records received through a FOIL Request detailing an elevated structure at 99 Park Avenue, Village of Babylon, New York, designated **Exhibit “11”**.
42. Annexed hereto is a true and accurate copy of photographs detailing a treehouse at 63 Wyandanch Avenue, Village of Babylon, New York, designated **Exhibit “12”**.
43. Annexed hereto is a true and accurate copy of records designated **Exhibit “13”** received in response to a FOIL Request, including a letter from Defendant Stephen Fellman dated February 20, 2020 stating, “It has come to our attention, that there is a ‘play house’ structure in your yard that was built without a permit.” The elevated structure at 63 Wyandanch Avenue is down the block from the Lepper children’s treehouse.
44. Annexed hereto is a true and accurate copy of Court Ordered Interrogatories posed to Gerard Glass, answering nearly every question that was previously objected to as privileged, designated **Exhibit “14”**.
45. Annexed hereto is a true and accurate copy of a document called “Notice of Violation,” along with notes, from Defendant Stephen Fellman, designated **Exhibit “15”**.
46. Annexed hereto is a true and accurate copy of various Village of Babylon meetings among Defendants concerning the persecution of John Lepper and his family presumably concerning the Lepper Family Treehouses. designated **Exhibit “16”**.
47. Annexed hereto is a true and accurate copy of an August 14, 2018 letter from Defendant Stephen Fellman stating that “Per Section 116 Unsafe Structures of the International Building Code the tree house at the above referenced

premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy Is Issued,” designated **Exhibit “17”**.

48. Annexed hereto is a true and accurate copy designated **Exhibit “18”** of an October 18, 2018 letter from Defendant Gerard Glass, Esq., addressed to Mr. and Mrs. Lepper stating, *in toto*, “As you know this office is counsel to the Village of Babylon. The Court has rendered its decision. Please let me know your intentions. Thank you for your attention and courtesies herein.”
49. Annexed hereto is a true and accurate copy designated **Exhibit “19”** of Defendant Stephen Fellman’s October 19, 2018 letter stating,

“On October 27, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback. I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house. You must remove the tree house in its entirety or summonses may be issued on a daily basis.”
50. Annexed hereto is a true and accurate copy designated **Exhibit “20”** of a decision vacating the guilty conviction of John Lepper, cited in designated Exhibits 17–19, by the Supreme Court, Appellate Term, dated December 19, 2019.
51. Annexed hereto is a true and accurate copy of a letter produced by Defendants designated **Exhibit “21”** titled “A letter from the Mayor about Treehouses and Other Things” ending “Cordially, Mayor Ralph Scordino” and stating in relevant part:

To begin with, this all started with complaints to my office from the homeowner's own neighbors. They complained this was no ordinary treehouse tucked away in someone's backyard. They explained it was nearly 100 square feet. The treehouse had sidewalls, a pitched roof and electric, and that the homeowner built the treehouse nearly on the property line along a residential street.

I referred the neighbors' complaints to our Building Inspector who, by the way, is also a licensed architect. He advised me that pursuant to State law and the Village Code the homeowner would need to obtain a building permit. This means he would have to submit plans to assure the treehouse was properly built and show the treehouse complied with local zoning.

The Building Inspector commented to me our laws in the Village are no different than anywhere else. Structures like this treehouse require a building permit to make sure they are safe, not a fire hazard and that they don't unfairly impact the privacy and other rights of the homeowner's neighbors. This seemed reasonable to me...

The homeowner chose to build this treehouse without getting the proper permit. It is now up to him to try to make it right.

Exhibit "21" (external quotation marks omitted).

52. Annexed hereto is a true and accurate copy designated **Exhibit "22"** of a letter dated October 24, 2019, sent by John Lepper to former Congressman Peter King requesting assistance with the oppression, harassment, retaliation and selective prosecution Mr. Lepper received regarding the Lepper children's treehouse.

53. Annexed hereto is a true and accurate copy designated **Exhibit “23”** marked as received by the Village of Babylon Mayor’s Office, decedent Mayor Ralph Scordino, dated October 29, 2018.
54. Annexed hereto is a true and accurate copy of a letter by James Brown, a New York licensed Professional Engineer dated and sealed on March 8, 2019 designated **Exhibit “24”** stating,
- “Based on my structural inspection of the treehouse structure in its current form, I find that the treehouse structure supported in the tree is structurally stable and meets code loadings for wind, snow and LL as prescribed by IBC and local requirements. In other words the structure is able to withstand all weather-related events that are in accordance with code-induced loading criteria.”
55. Annexed hereto is a true and accurate copy of cited pages from the deposition transcript of James Brown, a New York licensed Professional Engineer, subpoenaed by Defendants and questioned extensively over the Lepper family treehouse and the abovementioned reports provided to Defendants as **Exhibit “25”**
56. Annexed hereto is a true and accurate copy of the tickets filed against John Lepper as **Exhibit “26”**
57. Annexed hereto and designated **Exhibit “27”** is a true and accurate copy of the attachments to the original application for a building permit filed by John Lepper.
58. Annexed hereto is a true and accurate copy of a deposition transcript of Defendant Anthony Davida as **Exhibit “28”**.



59. Annexed hereto and designated **Exhibit “29”** are true and accurate photographs of a treehouse at 171 Peninsula Drive on the waterfront in Babylon Village.
60. Annexed hereto and designated **Exhibit “30”** is a true and accurate copy of the Litigation Hold Notice served upon the Defendants prior to the commencement of this litigation.
61. Annexed hereto and designated **Exhibit “31”** is a true and accurate copy of records reporting criminal drug use at 63 Wyandanch Ave. in the Village of Babylon.
62. Annexed hereto and designated **Exhibit “32”** is a true and accurate copy of the minutes from the Babylon Village Court hearing of August 14, 2018.
63. Annexed hereto and designated **Exhibit “33”** is a true and accurate copy of the minutes from the Babylon Village Court hearing of September 4, 2018.
64. Annexed hereto and designated **Exhibit “34”** is a true and accurate copy of the minutes from the New York State Supreme Court hearing of June 30, 2021 before Hon. Joseph C. Pastorella.
65. Annexed hereto and designated **Exhibit “35”** is an affidavit from Charlie Lepper.
66. Annexed hereto is a true and accurate copy of a deposition transcript of Defendant Deborah Longo as **Exhibit “36”**
67. Annexed hereto is a true and accurate copy of a deposition transcript of deceased Defendant Ralph Scordino as **Exhibit “37”**

68. Annexed hereto and designated **Exhibit “38”** is a copy of the stipulation agreeing to Defendants’ waivers and Plaintiff allowing Defendants to submit a late answer.
69. Annexed hereto and designated **Exhibit “39”** are true and accurate photographs of a treehouse at 50 South Carl Avenue in Babylon Village.
70. Annexed hereto is a true and accurate copy of a deposition transcript of Plaintiff John Lepper designated **Exhibit “40.”**
71. Annexed hereto is a true and accurate copy of a deposition transcript of Defendant Stephen Fellman as **Exhibit “41”**.
72. Annexed hereto is a true and accurate copy of a deposition transcript of Defendant Noelle Lepper as **Exhibit “42”**.
73. Annexed hereto is a true and accurate copy of a deposition transcript of Defendant Gerard Glass as **Exhibit “43”**.
74. Annexed hereto and designated **Exhibit “44”** is an affidavit from John Lepper in opposition to Defendants’ Motion for Summary Judgment.
75. Annexed hereto and designated **Exhibit “45”** is an affidavit from John Lepper in opposition to Defendants’ Motion for Preliminary Relief, showing another treehouse in the Village of Babylon with lesser safety supports on a much less healthy tree than the Lepper Family Treehouse
76. Annexed hereto and designated as **Exhibit “46”** are true and accurate copies of Newsday Articles evidencing John Lepper exercising his First Amendment Speech Rights and containing Defendants’ various admissions.

77. Annexed hereto as **Exhibit “47”** are true and accurate pictures of the Treehouse located houses away from Defendant trustee Anthony Davida.

### CONCLUSION

78. Defendants’ Motion for Summary Judgment should be denied, among other things, as it comes after a Plaintiff John Lepper discovered a number of other treehouses throughout the Village of Babylon (Plaintiffs’ Exhibits 9, 10, 11, 12, 29, 39) which had been constructed without building permits, much less Certificates of Occupancy and after microbursts, torrential rains, and hurricane force winds that decimated the Village of Babylon but left the Lepper children’s treehouse intact.
79. Defendants fail to offer sufficient substantial credible admissible evidence to support a grant of summary judgment and what little evidence Defendants do offer only serve to raise triable issues of fact which preclude summary judgment.
80. Plaintiffs respectfully request this Honorable Court to deny Defendants’ Motion for Summary Judgment and its application for Preliminary relief in their entirety all together with such other relief that this Honorable Court deems just and proper under the circumstances.

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DATED AT Melville, New York  
July 16, 2021

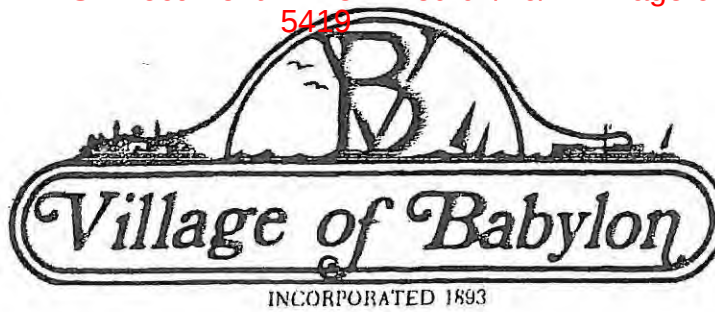
/S/

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Jeffrey C. Weber



153 West Main Street  
Babylon Village  
New York 11702  
(631) 669-1500

November 18, 2016

Mr. Mark Anthony Munisteri  
Mark Anthony Architects  
1563 Bellmore Avenue  
Bellmore, NY 11710

RE: Baldauf, 50 Thompson Avenue, Babylon, NY

Dear Mr. Munisteri,

After due consideration of the testimony given and evidence submitted, it was voted by the Board to **GRANT** this amended application for permission to maintain a garage requiring a variance to reduce the minimum side yard setback of 15 feet required for the garage to 5.27 feet proposed and to reduce the minimum side yard setback for the accessory building from 15 feet required to 3.67 feet proposed; and to **DENY** the minimum side yard setback of 15 feet required for the tree house to 7.2 feet proposed; the increase of the height limits of the accessory building from 15 feet permitted to 21.1 feet proposed; and the increase of the square feet permitted for the tree house/playground from 90 square feet permitted to 192 square feet proposed. Property located in Residence A-11 District. Suffolk County Real Property Tax Map District 0102, Section 13, Block 2, Lot 6. Application made in accordance with Section 365-13.

The variance relief requested by the Applicant to maintain the tree house and build an accessory building requiring a height variances are in the nature of Area Variances and the standards of Village Law Article 7, Section 712b[3], are applicable. Accordingly, in making its determination, the Zoning Board of Appeals is required to take into consideration the benefit to the Applicant, if the Variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In short, the legislature has dictated that a balance test be applied. The statute further requires that in making such determination, the Board shall also consider the following:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the Area Variances.

NOV 21 2016

*One copy provided to parent @ 8.75*



2. Whether the benefits sought by the Applicants can be achieved by some method feasible for the applicant to pursue other than Area Variances.
3. Whether the requested Area Variances are substantial.
4. Whether the proposed Variances will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or community, and
5. Whether the alleged difficulty was self-created.

The consideration as to whether or not an alleged difficulty is self-created is by virtue of the statute to be considered as relevant, "but shall not necessarily preclude the granting of an Area Variance."

Pursuant to the Village Code Section 248-32, the Board of Appeals is required to consider prior to granting an approval, the criteria set forth in Section 248-32 B.1[a] through [d] and 2[a] through [1].

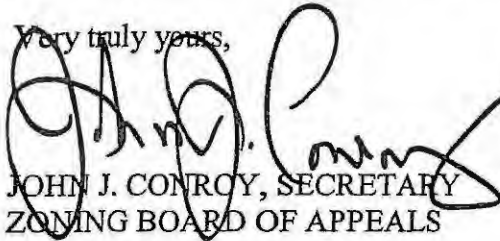
The Board feels that the request for the variances for the tree house (height, side yard, and area) the proposed accessory building would not be in keeping with area zoning or with the character of the neighborhood. Furthermore, there are alternative means of gaining the benefits sought under this request without the need for these variances. In particular the Board finds that:

1. The variances to reduce the minimum side yard setback of 15 feet required for the tree house to 7.2 feet proposed, the increased height from 15 ft. allowed to 21ft. proposed and to increase the square footage permitted for the tree house/playground from 90 square feet permitted to 192 square feet proposed would all be undesirable changes having an adverse impact. The limitations as to height size and setback for the accessory structure are intended to preserve open space and limit intensity of use, especially within close proximity to adjoining properties. To grant these variances, especially in the aggregate for a single accessory structure is contrary to the purposes of the ordinance.
2. The benefits can otherwise be achieved by the Applicant. In particular the applicant can reduce the size and height of the accessory structure and relocate same.
3. The requested variances are each substantial and in the aggregate the variances are even more significant because they all relocate to the same structure.

4. The variances if granted would adversely affect the aesthetic characteristics having a negative impact on the surrounding properties.
5. The difficulty is self-created, arising only by reason of the Applicant's desire to construct a tree house and an accessory building which exceeds the height and area limits and to locate the structure closer to the side yard than permitted.

This constitutes the decision of the Board.

Very truly yours,



JOHN J. CONROY, SECRETARY  
ZONING BOARD OF APPEALS

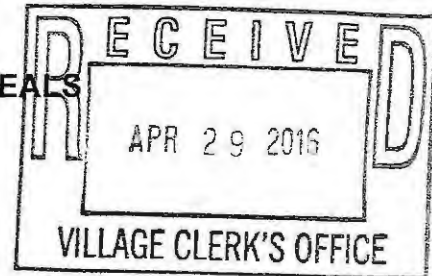
JJC/ke

Enclosure

cc: Ralph A. Scordino, Mayor  
Steve Fellman, Bldg. Inspector  
James Slack, Planning Board Chairman  
Patricia C. Carley, Village Clerk  
David Roth, Esq.



**VILLAGE OF BABYLON**  
**APPLICATION TO THE ZONING BOARD OF APPEALS**  
(page 1 of 4)



COUNTY OF SUFFOLK

SS:

STATE OF NEW YORK

Mark Anthony Munisteri

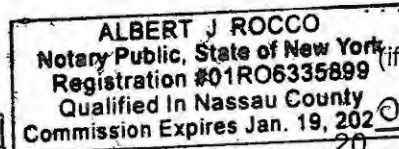
being duly sworn,

deposes and says that he/she (or) they is/are Agent of Owner of the property described below. Owner or Agent of owner

That all statements made in this application are true to the best of his (or) her knowledge and belief, except as to the matters therein stated to be alleged on information and belief and as to the matters he (or) she believes the same to be true. He (or) she understands the requirements of this application with regards to the submittal of plot plans, other drawings and the posting of public notices.

Sworn before me this

29 Day of April



Albert Rocco  
Notary Public, Suffolk County

In the Matter of the Application of:

Applicant's Name: <u>Mark Anthony Architects</u>		Owner of Property if Other Than Applicant Name: <u>Harold Baldauf</u>	
Address: <u>1563 Bellmore Ave</u> <u>Bellmore NY 11710</u>		Address: <u>50 Thompson Ave</u> <u>Babylon NY 11702</u>	
Telephone No: <u>516-409-1900</u>		Alternate Telephone No: _____	
Property Address or Description of Location: <u>50 Thompson Ave</u> <u>Babylon NY 11702</u>			

FOR VILLAGE CLERK ONLY:

Zoned: A-11 Section 13 Block 2 Lot 6

For Plans Examiner Only:

Plans Reviewed \_\_\_\_\_ No Variance Required \_\_\_\_\_ Variance Required \_\_\_\_\_ (see attached comments)  
(date)

## VILLAGE OF BABYLON

### APPLICATION TO THE BOARD OF APPEALS

(page 2 of 4)

Description of relief sought, attach separate sheet if necessary:

We are asking for a minimum side yard setback of 7.2' for the treehouse, 5.27' for the garage and 3.67' for the shed. We are also requesting a shed height of 21.1' and a treehouse/playground of 192 s.f.

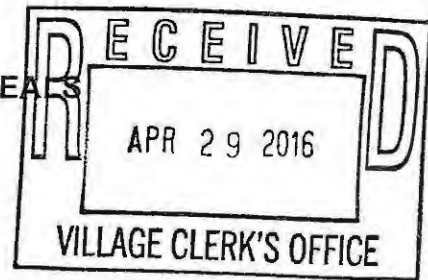
\*\*\* PLEASE NOTE \*\*\*

Variances required will be included whether or not listed above, as deemed necessary, and as determined by the Site Plans Examiner and the Zoning Board of Appeals, after review of the plans submitted with this application. The legal notice for this application will be derived based on the plans submitted.

1. Has a building permit been refused by Building Inspector? No . . . . .
2. Is there a school, house of worship, or hospital within 500 ft. of this premises? No .
3. Approximate cost of work this application is made for? \$ \$45,000 . . . . .
4. Is this premises with 500 feet of (Answer Yes or No):
  - No . . . Boundary of any Village or Town
  - No . . . Boundary of any existing or proposed County, State, or Federal park.
  - No . . . The right of way of any existing or proposed County or State parkway, thruway, expressway, road or highway.
  - No . . . The existing or proposed right of way of any stream or drainage Channel owned by the County or for which the County has established Channel lines.
  - No . . . The existing or proposed boundary of any other County, State or Federal owned land.
  - Yes . . The Atlantic Ocean, Long Island Sound, any bay in Suffolk County, Or estuary of any of the foregoing bodies of water.



VILLAGE OF BABYLON  
APPLICATION TO THE ZONING BOARD OF APPEALS  
(page 1 of 4)



COUNTY OF SUFFOLK

SS:

STATE OF NEW YORK

Mark Anthony Munisteri

being duly sworn,

deposes and says that he/she (or) they is/are Agent of Owner of the property described below. Owner or Agent of owner

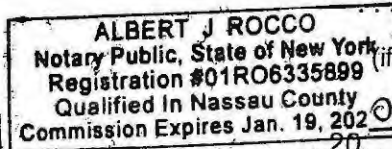
That all statements made in this application are true to the best of his (or) her knowledge and belief, except as to the matters therein stated to be alleged on information and belief and as to the matters he (or) she believes the same to be true. He (or) she understands the requirements of this application with regards to the submittal of plot plans, other drawings and the posting of public notices.

Sworn before me this

29

Day of

April



(if owner is applicant, all owners must sign)

Albert Rocco  
Notary Public, Suffolk County

In the Matter of the Application of:

Owner of Property if Other Than Applicant

Applicant's Name: Mark Anthony Architects Name: Harold Baldauf  
Address: 1563 Bellmore Ave Address: 50 Thompson Ave  
Bellmore NY 11710 Babylon NY 11702

Telephone No: 516-409-1900 Alternate Telephone No: \_\_\_\_\_

Property Address or Description of Location: 50 Thompson Ave  
Babylon NY 11702

FOR VILLAGE CLERK ONLY:

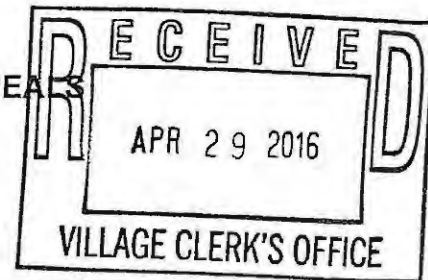
Zoned: A-11 Section 13 Block 2 Lot 6

For Plans Examiner Only:

Plans Reviewed \_\_\_\_\_ No Variance Required \_\_\_\_\_ Variance Required \_\_\_\_\_ (see attached comments)  
(date)



VILLAGE OF BABYLON  
APPLICATION TO THE ZONING BOARD OF APPEALS  
(page 1 of 4)



COUNTY OF SUFFOLK

SS:

STATE OF NEW YORK

Mark Anthony Muni'steri

being duly sworn,

deposes and says that he/she (or) they is/are Agent of Owner of the property described below. Owner or Agent of owner

That all statements made in this application are true to the best of his (or) her knowledge and belief, except as to the matters therein stated to be alleged on information and belief and as to the matters he (or) she believes the same to be true. He (or) she understands the requirements of this application with regards to the submittal of plot plans, other drawings and the posting of public notices.

Sworn before me this

29 Day of April

ALBERT J ROCCO  
Notary Public, State of New York  
Registration #01RO6335899  
Qualified In Nassau County  
Commission Expires Jan. 19, 2020

Albert Rocco  
Notary Public, Suffolk County

(if owner is applicant, all owners must sign)

In the Matter of the Application of:

Owner of Property if Other Than Applicant	
Applicant's Name: <u>Mark Anthony Architects</u>	Name: <u>Harold Baldauf</u>
Address: <u>1563 Bellmore Ave</u>	Address: <u>50 Thompson Ave</u>
<u>Bellmore NY 11710</u>	<u>Babylon NY 11702</u>
Telephone No: <u>516-409-1900</u> Alternate Telephone No: _____	
Property Address or Description of Location: <u>50 Thompson Ave</u>	
<u>Babylon NY 11702</u>	

FOR VILLAGE CLERK ONLY:

Zoned: A-11 Section 13 Block 2 Lot 6

For Plans Examiner Only:

Plans Reviewed \_\_\_\_\_ No Variance Required \_\_\_\_\_ Variance Required \_\_\_\_\_ (see attached comments)  
(date)



## VILLAGE OF BABYLON

### APPLICATION TO THE BOARD OF APPEALS

(page 2 of 4)

Description of relief sought, attach separate sheet if necessary:

We are asking for a minimum side yard setback of 7.2' for the treehouse, 5.27' for the garage and 3.67' for the shed. We are also requesting a shed height of 21.1' and a treehouse/playground of 192 s.f.

#### \*\*\* PLEASE NOTE \*\*\*

Variances required will be included whether or not listed above, as deemed necessary, and as determined by the Site Plans Examiner and the Zoning Board of Appeals, after review of the plans submitted with this application. The legal notice for this application will be derived based on the plans submitted.

1. Has a building permit been refused by Building Inspector? *No* . . . . .
2. Is there a school, house of worship, or hospital within 500 ft. of this premises? *No* .
3. Approximate cost of work this application is made for? \$ *\$45,000* . . . . .
4. Is this premises with 500 feet of (Answer Yes or No):
  - No* . . . Boundary of any Village or Town
  - No* . . . Boundary of any existing or proposed County, State, or Federal park.
  - No* . . . The right of way of any existing or proposed County or State parkway, thruway, expressway, road or highway.
  - No* . . . The existing or proposed right of way of any stream or drainage Channel owned by the County or for which the County has established Channel lines.
  - No* . . . The existing or proposed boundary of any other County, State or Federal owned land.
  - Yes* . . The Atlantic Ocean, Long Island Sound, any bay in Suffolk County, Or estuary of any of the foregoing bodies of water.

## Office of the Village Clerk

Date received 11/10/16 REQUIRED RESPONSE DATE 11/17/16

DEPARTMENT to compile documents requested and to receive FOIL request:

(circle)

Village Clerk

Joel

Mayor

Treasurer

Building

ZBA

architectural Review

(circle who to get copies) other than Village Clerk and above:

Joel

Mayor

Treasurer

Building

Total pages \_\_\_\_\_ Fee due @ .25 per page \_\_\_\_\_

Date documents will be available if not on response date \_\_\_\_\_

Letter sent \_\_\_\_\_



APPLIC.

ON

C RECORDS



11:30 am

TO: RECORDS ACCESS OFFICER  
VILLAGE OF BABYLON  
153 W MAIN ST  
BABYLON, NEW YORK 11702

I hereby apply to (check one)

Or

✓

12/6/16

- called to see if  
he still wanted  
FOIL-LM

cord:

① Architectural review  
march 31, 2016

in regards to 50 Thompson Ave  
Babylon, NY

Print name Jeanette ParentiMailing address 7 Troy Place  
Merich, NY 11566Daytime Phone # 516 510 7134Signature [Signature]Representing Harold Baldauf

② 6-15-16  
Zoning Board Meeting minutes  
in relation to 50 Thompson Ave  
Babylon, NY

③ 7-20-16  
Zoning Board Meeting minutes  
in relation to 50 Thompson Ave  
Babylon, NY

APPROVED \_\_\_\_\_ OR  
DENIED \_\_\_\_\_ (FOR THE REASON CHECKED BELOW):

\_\_\_\_\_ CONFIDENTIAL DISCLOSURE PART OF INVESTIGATORY FILES  
\_\_\_\_\_ UNWARRANTED INVASION OF PERSONAL PRIVACY  
\_\_\_\_\_ RECORD OF WHICH THIS AGENCY AS LEGAL CUSTODIAN CANNOT BE FOUND  
\_\_\_\_\_ EXEMPTED BY STATUTE OTHER THAN THE FREEDOM OF INFORMATION ACT  
\_\_\_\_\_ OTHER \_\_\_\_\_

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_

Notice: You have the right to appeal a denial of this application to the Board of Trustees, Village of Babylon, 153 West Main Street, Babylon, New York 11702, who must fully explain the reasons for such denial in writing seven days after receipt of an appeal.

I hereby appeal:

Signature \_\_\_\_\_ Date \_\_\_\_\_

OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

May 10, 2018

Mr. John Lepper  
59 Cockonoe Avenue  
Babylon, NY 11702


Re: 59 Cockonoe Avenue, Babylon

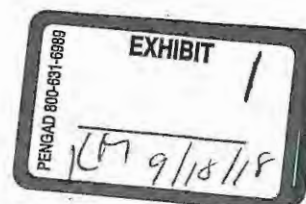
Dear Mr. Lepper,

It has come to my attention that you are building a structure, in the rear/front yard of the above referenced premises, that may require a building permit.

Please contact me at the number above to discuss this matter.

Respectfully submitted;

  
Stephen Fellman  
Building Inspector





**VILLAGE OF BABYLON**153 West Main Street  
Babylon, New York 11702**(631) 669-1300****BUILDING DEPARTMENT  
BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.)

Permit(s) requested (check one or more below)  
Numbers refer to questions on right that must be answered.

**Building Permit**

- ☐ Commercial ☐ Industrial ☐ Residential  
☐ Main Building ☐ Addition 1-8  
☐ Accessory Building ☐ Addition 1-8  
☐ Interior Alteration ☐ Addition 1-8  
☐ Two-Family Special Permit 1-3, 7, 8  
☐ Change of Use or Occupancy 1-5, 7, 8  
☐ Fire Damage Repair 1-4, 8  
☐ Fireplace 3, 7  
☐ Board of Appeals 1-3, 7, 8  
☐ Swim/Pool ☐ In-Ground ☐ Above  
4 foot safety fence required 1-5, 7, 8  
☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation  
(plus plumbing permit) 1-3, 6, 8  
☐ Other - Explain 1-8

**ARTICLE X — SECTION 1003 CERTIFICATE OF OCCUPANCY.**

**1. New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

**2. Change of Occupancy.**

(a) No change or use shall be made in a building hereafter erected or altered that is not consistent with the last issued certificate of occupancy, for such building unless a permit is secured. In case of an existing building, no change of occupancy that would bring it under some special provision of this ordinance shall be made unless the Building Inspector, upon inspection, finds out that such building conforms substantially to the provisions of this ordinance with respect to the proposed new occupancy and use, and issues a certificate of occupancy therefor.

(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name 59 Cockson Ave  
Address 59 Cockson Ave  
Babylon NY 11702  
Phone # (631) 766-1181

[Signature]  
Signature of PROPERTY OWNER

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_

Notary Public

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone # \_\_\_\_\_

Signature of CONTRACTOR  
(if applicable)

County Home  
Improvement License # \_\_\_\_\_

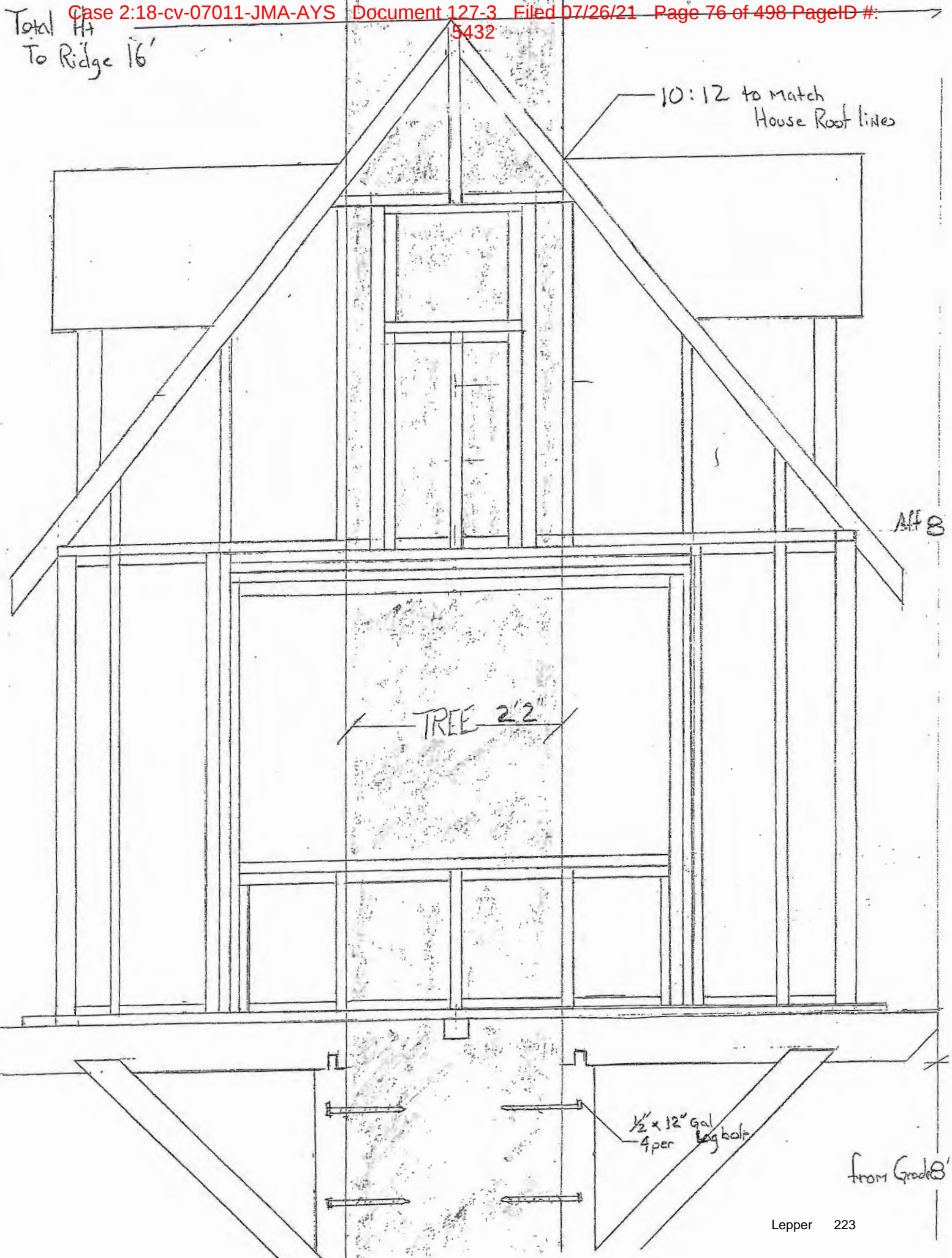
Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_

Notary Public

102 -	Section	Block	Lot	Flood Zone
Estimated Value of Construction \$				Fee:
Permit Number: <u>A-7</u>				Date Checked:
Current Zoning <u>A-7</u>				Approved By:
Permit Application Denied				Why?
Is this permit a result of a Zoning Board of Appeals approval? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, what conditions, if any, were set:				
Board of Appeals Case #:				
Pre-site inspection made by: _____ Date: _____				
Approval for Issuance of Permit: _____ Date: _____				
Issued by: _____ Date: _____ Checked by: _____				
Certificate of Occupancy # _____				

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

- PRESENT USE of property \_\_\_\_\_
- PROPOSED USE \_\_\_\_\_
- DESCRIPTION OF PROPOSED WORK \_\_\_\_\_
- FLOOR AREA to be constructed or altered: \_\_\_\_\_ Total Square Feet
- SIZE of property (50) x (150) = \_\_\_\_\_ sq. ft. or \_\_\_\_\_ Acres
- HEIGHT of building from average grade to highest point 16 Feet
- PROPERTY LOCATION 59 Cockson Ave  
☐ N ☐ S ☐ E ☐ W Side of \_\_\_\_\_ St.  
Rd. \_\_\_\_\_ Ave. \_\_\_\_\_ Feet
- ORIGINAL CERTIFICATE OF OCCUPANCY # \_\_\_\_\_  
Certified as: \_\_\_\_\_ Date: \_\_\_\_\_









**VILLAGE OF BABYLON**  
 153 West Main Street  
 Babylon, New York 11702  
 (631) 669-1300  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.

Permit(s) requested (check one or more below)  
 Numbers refer to questions on right that must be answered.

- Building Permit
- ☐ Commercial ☐ Industrial ☐ Residential
  - ☐ Main Building ☐ Addition 1-8
  - ☐ Accessory Building ☐ Addition 1-8
  - ☐ Interior Alteration ☐ Addition 1-8
  - ☐ Two-Family Special Permit 1-3, 7, 8
  - ☐ Change of Use or Occupancy 1-5, 7, 8
  - ☐ Fire Damage Repair 1-4, 8
  - ☐ Fireplace 3, 7
  - ☐ Board of Appeals 1-3, 7, 8
  - ☐ Swim/Pool ☐ In-Ground ☐ Above
  - ☐ 4 foot safety fence required 1-5, 7, 8
  - ☐ Demolition (Valid only 6 mos.) 1-3, 7, 8
  - ☐ Underground Tank Installation
  - ☐ (plus plumbing permit) 1-3, 6, 8
  - ☐ Other - Explain 1-8

102- 4 - 1 - 100 Flood Zone \_\_\_\_\_  
 Section Block Lot  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
 Permit Number: \_\_\_\_\_  
 Current Zoning A-7 Approved By: \_\_\_\_\_ Date Checked: \_\_\_\_\_  
 Permit Application Denied \_\_\_\_\_ Why? \_\_\_\_\_  
 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
 If yes, what conditions, if any, were set: \_\_\_\_\_  
 Board of Appeals Case #: \_\_\_\_\_  
 Pre-site inspection made by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approval for Issuance of Permit: \_\_\_\_\_ Date: \_\_\_\_\_  
 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy # \_\_\_\_\_

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

1. PRESENT USE of property \_\_\_\_\_  
 2. PROPOSED USE \_\_\_\_\_  
 3. DESCRIPTION OF PROPOSED WORK \_\_\_\_\_  
 4. FLOOR AREA to be constructed or altered: \_\_\_\_\_ Total Square Feet  
 5. SIZE of property (59) x (150) = \_\_\_\_\_ sq. ft. or \_\_\_\_\_ Acres  
 6. HEIGHT of building from average grade to highest point 16 Feet  
 7. PROPERTY LOCATION 59 Cockosoe Ave  
☐ N ☐ S ☐ E ☐ W Side of \_\_\_\_\_ St.  
 \_\_\_\_\_ Rd. \_\_\_\_\_ Ave. \_\_\_\_\_ Feet  
 8. ORIGINAL CERTIFICATE OF OCCUPANCY # \_\_\_\_\_  
 Certified as: \_\_\_\_\_ Date: \_\_\_\_\_

**ARTICLE X — SECTION 1003 CERTIFICATE OF OCCUPANCY.**

1. **New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

2. **Change of Occupancy.**

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(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name 59 Cockosoe Ave  
 Address 59 Cockosoe Ave  
Babylon NY 11702  
 Phone # (631) 766-1181

[Signature]  
 Signature of PROPERTY OWNER

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone # \_\_\_\_\_

\_\_\_\_\_  
 Signature of CONTRACTOR  
 (if applicable)

County Home Improvement License # \_\_\_\_\_

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
 Notary Public



Total Ht  
To Ridge 16'

102

10:12 to match  
House Roof lines

Att 8

TREE 2'2"

RECEIVED

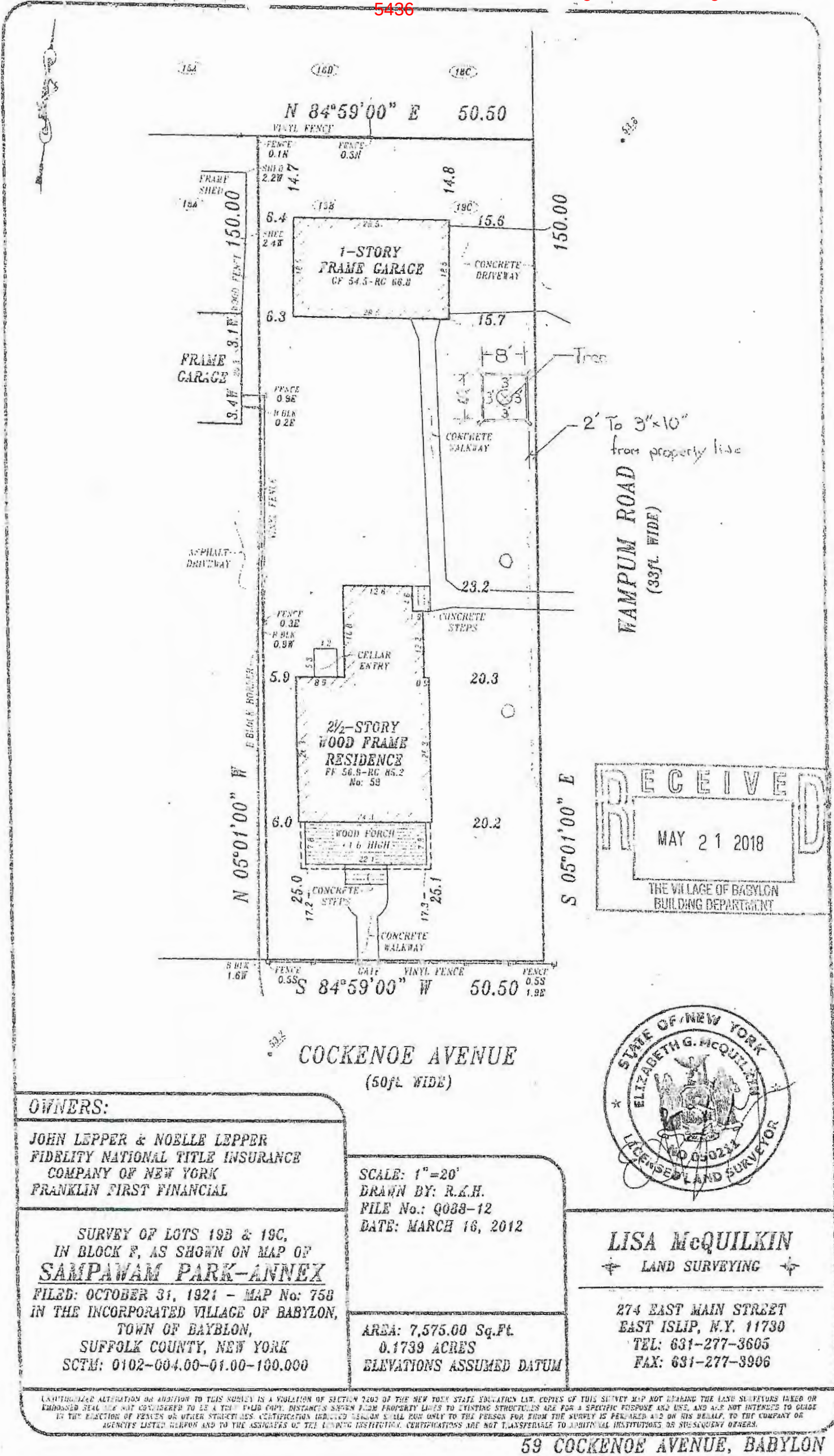
MAY 21 2018

THE VILLAGE OF BAYLON  
BUILDING DEPARTMENT

1/2" x 12" gal  
4 per lag bolt

from Grade E















**John Lepper**  
59 Cockenoe Ave  
Babylon, New York 11704

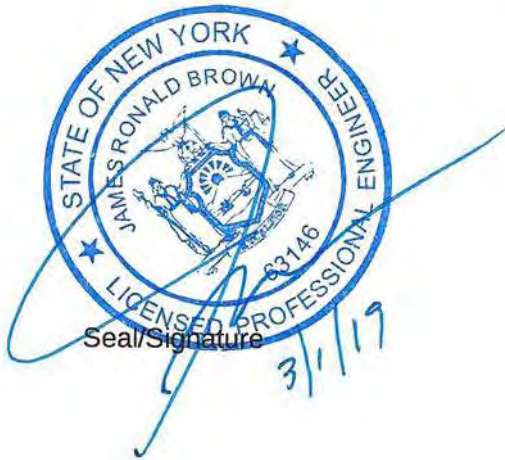
Re: Treehouse

Dear John:

Per the request and direction of Judge Bianco I am providing certification as follows:

Based on my structural inspection of the treehouse structure in its current form, I find that the treehouse structure supported in the tree is structurally stable and meets code loadings for wind, snow and LL as prescribed by IBC and local requirements. In other words the structure is able to withstand all weather-related events that are in accordance with code-induced loading criteria.

James R Brown, PhD, PE  
NY Professional Engineer - 063146



**VILLAGE OF BABYLON**  
 153 West Main Street  
 Babylon, New York 11702  
 (631) 669-1300  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.

Permit(s) requested (check one or more below)  
 Numbers refer to questions on right that must be answered.

- Building Permit  
☐ Commercial ☐ Industrial ☐ Residential  
☐ Main Building ☐ Addition 1-8  
☐ Accessory Building ☐ Addition 1-8  
☐ Interior Alteration ☐ Addition 1-8  
☐ Two-Family Special Permit 1-3, 7, 8  
☐ Change of Use or Occupancy 1-5, 7, 8  
☐ Fire Damage Repair 1-4, 8  
☐ Fireplace 3, 7  
☐ Board of Appeals 1-3, 7, 8  
☐ Swim/Pool ☐ In-Ground ☐ Above  
 4 foot safety fence required 1-5, 7, 8  
☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation  
 (plus plumbing permit) 1-3, 6, 8  
☐ Other - Explain 1-8

102- 4 - 1 - 100 Flood Zone \_\_\_\_\_  
 Section Block Lot  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
 Permit Number: \_\_\_\_\_  
 Current Zoning A-7 Approved By: \_\_\_\_\_ Date Checked: \_\_\_\_\_  
 Permit Application Denied \_\_\_\_\_ Why? \_\_\_\_\_  
 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
 If yes, what conditions, if any, were set: \_\_\_\_\_  
 Board of Appeals Case #: \_\_\_\_\_  
 Pre-site inspection made by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approval for Issuance of Permit: \_\_\_\_\_ Date: \_\_\_\_\_  
 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy # \_\_\_\_\_

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

1. PRESENT USE of property \_\_\_\_\_  
 2. PROPOSED USE \_\_\_\_\_  
 3. DESCRIPTION OF PROPOSED WORK \_\_\_\_\_  
 4. FLOOR AREA to be constructed or altered: \_\_\_\_\_ Total Square Feet  
 5. SIZE of property (50) x (150) = \_\_\_\_\_ sq. ft. or \_\_\_\_\_ Acres  
 6. HEIGHT of building from average grade to highest point 16 Feet  
 7. PROPERTY LOCATION 59 Cockosoe Ave  
☐ N ☐ S ☐ E ☐ W Side of \_\_\_\_\_ St.  
 \_\_\_\_\_ Rd. \_\_\_\_\_ Feet  
 8. ORIGINAL CERTIFICATE OF OCCUPANCY # \_\_\_\_\_  
 Certified as: \_\_\_\_\_ Date: \_\_\_\_\_

**ARTICLE X — SECTION 1003 CERTIFICATE OF OCCUPANCY.**

1. **New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

2. **Change of Occupancy.**

(a) No change or use shall be made in a building hereafter erected or altered that is not consistent with the last issued certificate of occupancy, for such building unless a permit is secured. In case of an existing building, no change of occupancy that would bring it under some special provision of this ordinance shall be made unless the Building Inspector, upon inspection, finds out that such building conforms substantially to the provisions of this ordinance with respect to the proposed new occupancy and use, and issues a certificate of occupancy therefor.

(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name 59 Cockosoe Ave  
 Address 59 Cockosoe Ave  
Babylon NY 11702  
 Phone # (631) 766-1181

Signature of PROPERTY OWNER

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone # \_\_\_\_\_

Signature of CONTRACTOR  
 (if applicable)

County Home  
 Improvement License # \_\_\_\_\_

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

Notary Public

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

Notary Public

Lepper 8



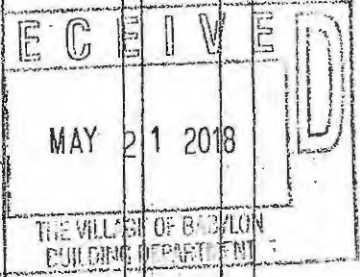
Total Ht  
To Ridge 16'

102

10:12 to match  
House Roof lines

Att 8

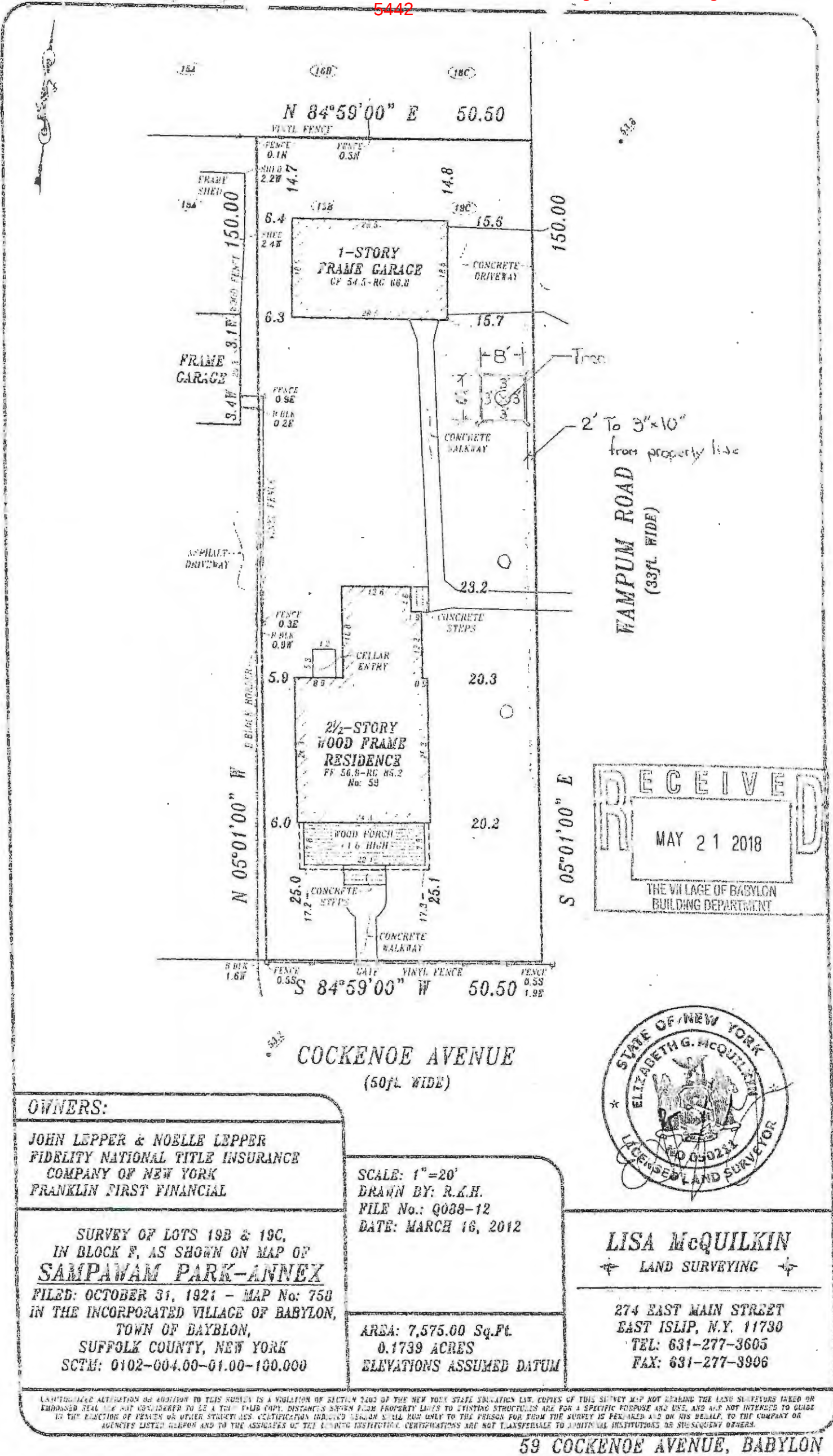
TREE 2'2"



1/2" x 12" Gal  
4 per leg bolts

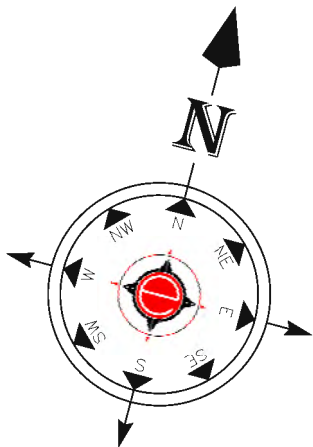
from Grade



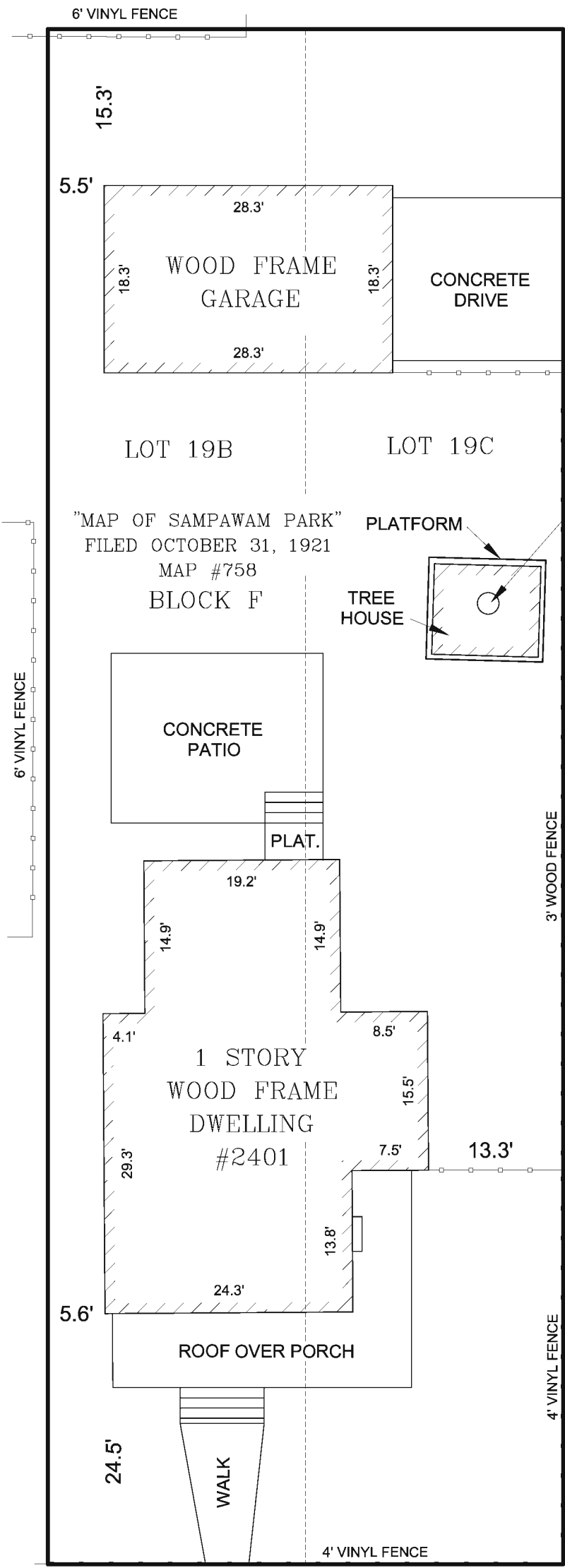




N84°59'00"E 50.50'



N05°01'00"W 150.00'



S05°01'00"E 150.00'

WAMPUM ROAD

S84°59'00"W 50.50'

COCKENOE AVE

PREPARED IN THE ACCORDANCE WITH THE MINIMUM STANDARDS FOR TITLE SURVEYS AS ESTABLISHED BY THE L.I.A.L.S. AND ADOPTED FOR SUCH USE BY THE NEW YORK STATE LAND TITLE ASSOCIATION.

THE OFFSETS (OR DIMENSIONS) SHOWN HEREON FROM THE STRUCTURES TO THE PROPERTY LINES ARE FOR A SPECIFIC PURPOSE AND USE AND THEREFORE ARE NOT INTENDED TO GUIDE THE ERECTION OF FENCES, RETAINING WALLS, POOLS, PATIONS, PLANTING AREAS, ADDITIONS TO BUILDINGS AND ANY OTHER TYPE OF CONSTRUCTION.

DATE	DESCRIPTION
FEBRUARY 1, 2019	UPDATED SURVEY
TOWN.....BABYLON	
LOT.....1	
BLOCK.....100	
COUNTY.....SUFFOLK	
DWG BY.....J.A.	
CHKD BY.....J.A.	

NOTE:  
Unauthorized alterations or additions to this survey is a violation of section 7209 of the New York State education law. Copies of this survey map not bearing the land surveyor's inked seal or embossed seal shall not be considered to be a valid true copy. Guarantees or certifications indicated hereon shall run only to the person for whom the survey is prepared, and on his behalf to the title company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Guarantees or certification are not transferable to additional institutions or subsequent owners.

SCALE 1"=10'



EMPIRE STATE  
LAYOUT, INC.

1786 BELLMORE AVE  
MERRICK, NY 11566

TEL 516-679-7970 FAX 516-679-7971

VISIT US AT: WWW.EMPIRESTATELAYOUT.COM

JACOBS

Sheet No. 1 of 1  
Project CLOS Structure  
Authored by JB Date 2/1/19  
Checked by JB/BO Date 2/3/19

LOADS:

Live Load: 40 PSF  
Dead Load: STEEL Joist Wood  
Snow: 25 PSF (Ground Snow)  
Wind: 115 mph, Exposure B

CALCULATE Weight (DL):

Roof:  $(10'-3" \times 8'-6") \approx 87.12$   
USE 88 SF.  
DL Roof =  $88 \times 10 \text{ PSF} = 880 \#$   
Dormers = ADD 50# EA. =  $\frac{100}{980 \#}$   
= say 1000#

WALLS:  $(\frac{1}{2}) \times 6.3' \times [9.3' + 8.3' + 9.3' + 8.3'] \times 10 \text{ PSF}$   
= 2217#

Floor:  $9.3' \times 8.3' \times 10 \text{ PSF} = 772 \#$   
 $3988.7 \#$   
TOTAL WT = say 4000#  
(This is Conservative)

GRAVITY Load To EA. Leg Support = 1000#

WIND:  $\approx$  Pressure = 21 PSF  
BASED ON 115 mph  
 ~~$\times 1.2$   
 $DL = 1200 \#$~~



**JACOBS**

Subject TECHHOUSE

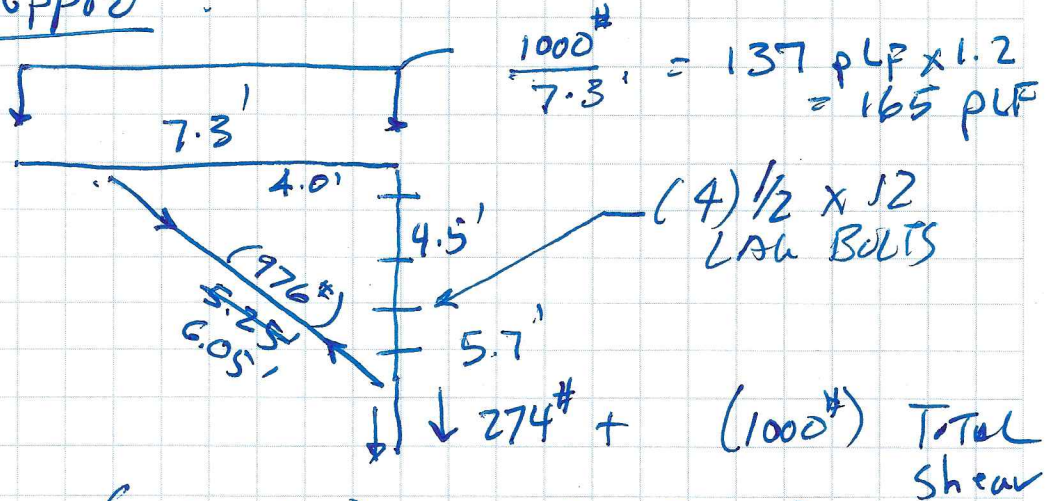
Project Calcs - Structure

Sheet No. 2 of

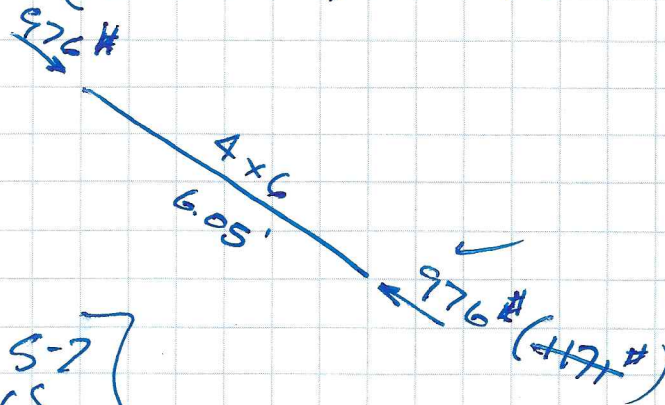
Authored by JB Date 2/1/19

Checked by BO Date 2/3/19

LEG Support :



DiAG: 4x6 (3.5 x 5.5) = 19.25 in<sup>2</sup>



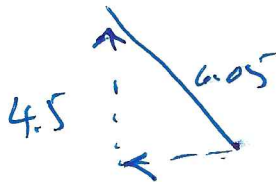
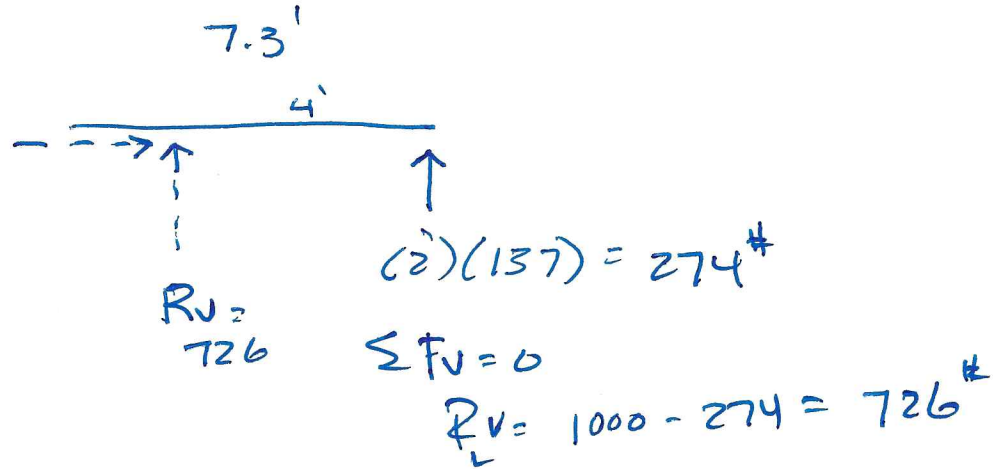
[SEE S-7  
CALCS]

CHECK LAG BOLTS: 1/2" x 12"

SHEAR CAP. = 624#

(4) x 624# = 2496  
 $\frac{2496}{\sqrt{\frac{1000}{1200}}} = 2.5$   
 SAFETY FACTOR (Shear)  
 OK  
 OK

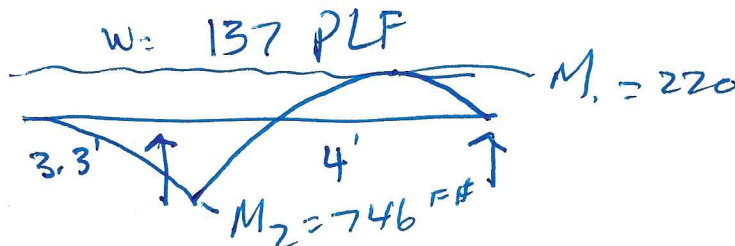
Supplemental  
CALLS;



$$\frac{4.5}{726} \times \frac{6.05}{x} \therefore x = \frac{(6.05)(726)}{4.5}$$

$$x = 976^{\#}$$

HORIZONTAL ARM:



$$M_1 = \frac{w}{8l^2} (1+a)^2 (1-a)^2 = \frac{137}{8(4)} (4+3.3)^2 (4-3.3)^2 = 220 \text{ F-}\#$$

$$M_2 = \frac{wa^2}{2} = \frac{137(3.3)^2}{2} = 746 \text{ F-}\#$$

$$M = 746 \text{ ft}\cdot\text{ft}$$

$$S = (4 \times 6) = 17.64 \text{ in}^3$$

$$I = 48.52 \text{ in}^4$$

$$A = 19.25 \text{ in}^2$$

Use Allow.  $S_{\text{LOSS}} = 975 (F_b)$  Timbers

$$F_b = M/S = \frac{746(12)}{17.646} = 507.28 \text{ psi} < 975 \text{ OK}$$

Simple Span Col:

$$L_e = 0.8L = 0.8 \times 6.05' = 4.84'$$

$$\frac{L_e}{d} = \frac{4.84(12)}{3.5} = 16.5 < 50 \text{ OK}$$

$$F_{ce} = \frac{0.3 E}{(L_e/d)^2} = \frac{0.3(1,300,000)}{(16.5)^2} = 1432 \text{ #/in}^2$$

$$\frac{F_{ce}}{F_c} = \frac{1432}{1121} = 1.27$$

$$F_c = 975 \times 1.15 = 1121 \text{ #/in}^2$$

$$\begin{aligned} \bar{F}_c &= 1121 \left[ \frac{1 + 1.27}{2 \times .8} - \sqrt{\left( \frac{1 + 1.27}{2 \times .8} \right)^2 - \frac{1.27}{.8}} \right] \\ &= 857 \text{ #/in}^2 \end{aligned}$$

$$P = \frac{857 \times 19.25}{A_{\text{allow}}} = \frac{16,510 \text{ #}}{976 \text{ #}} < 976 \text{ #}$$



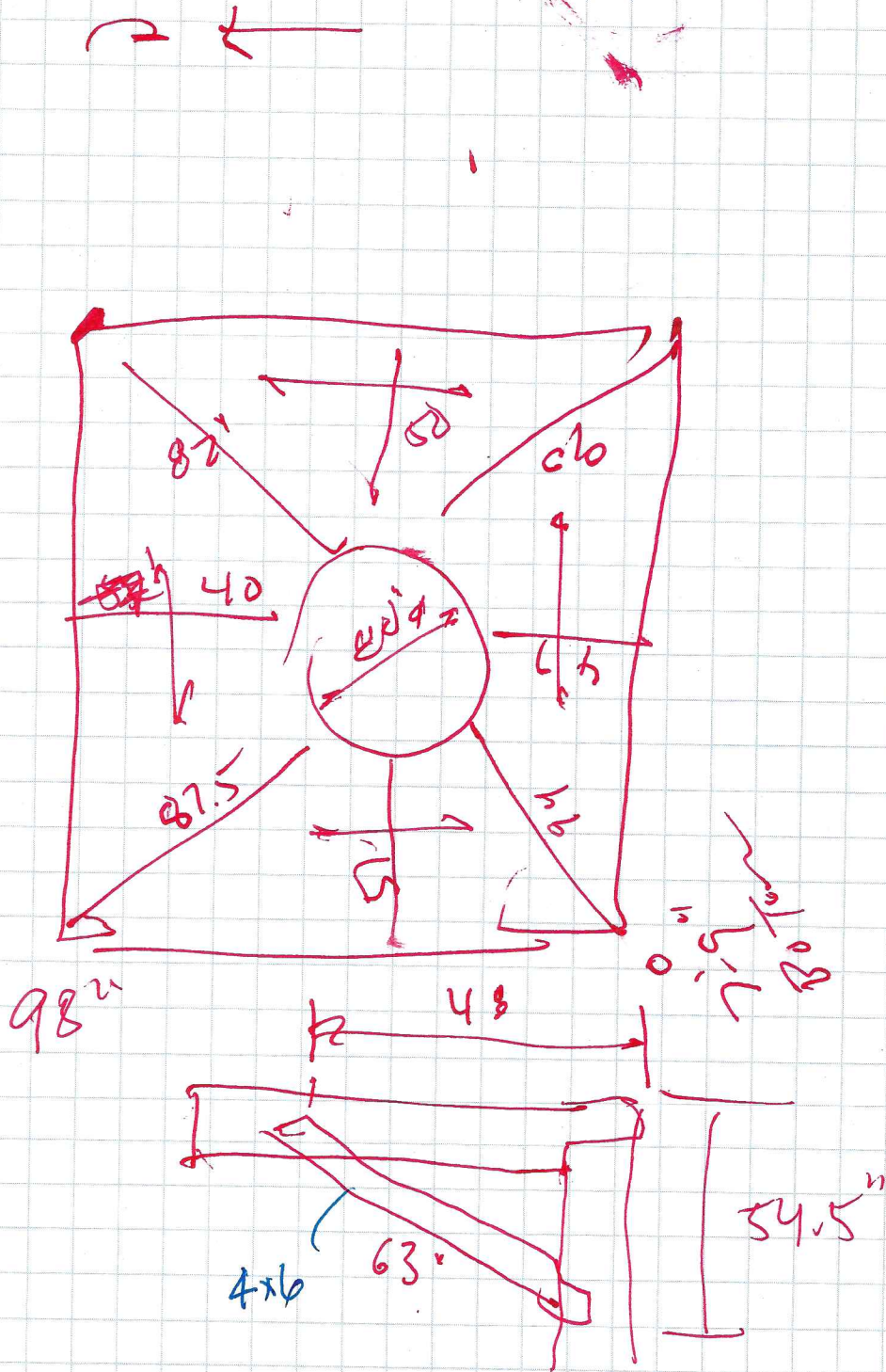
**JACOBS**

Subject \_\_\_\_\_ Project \_\_\_\_\_

Sheet No. \_\_\_\_\_ of \_\_\_\_\_

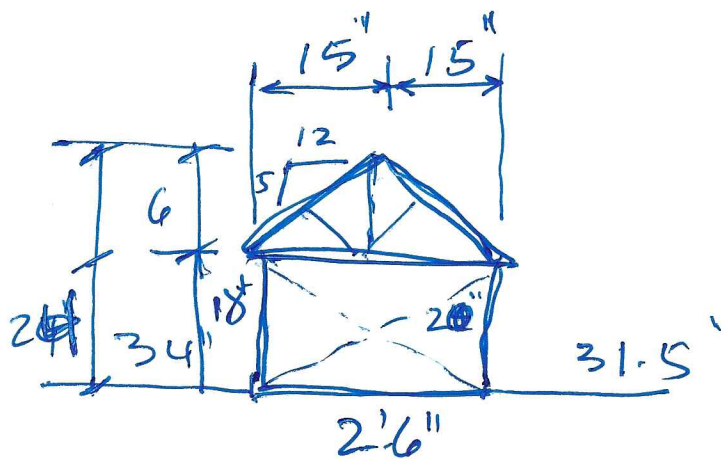
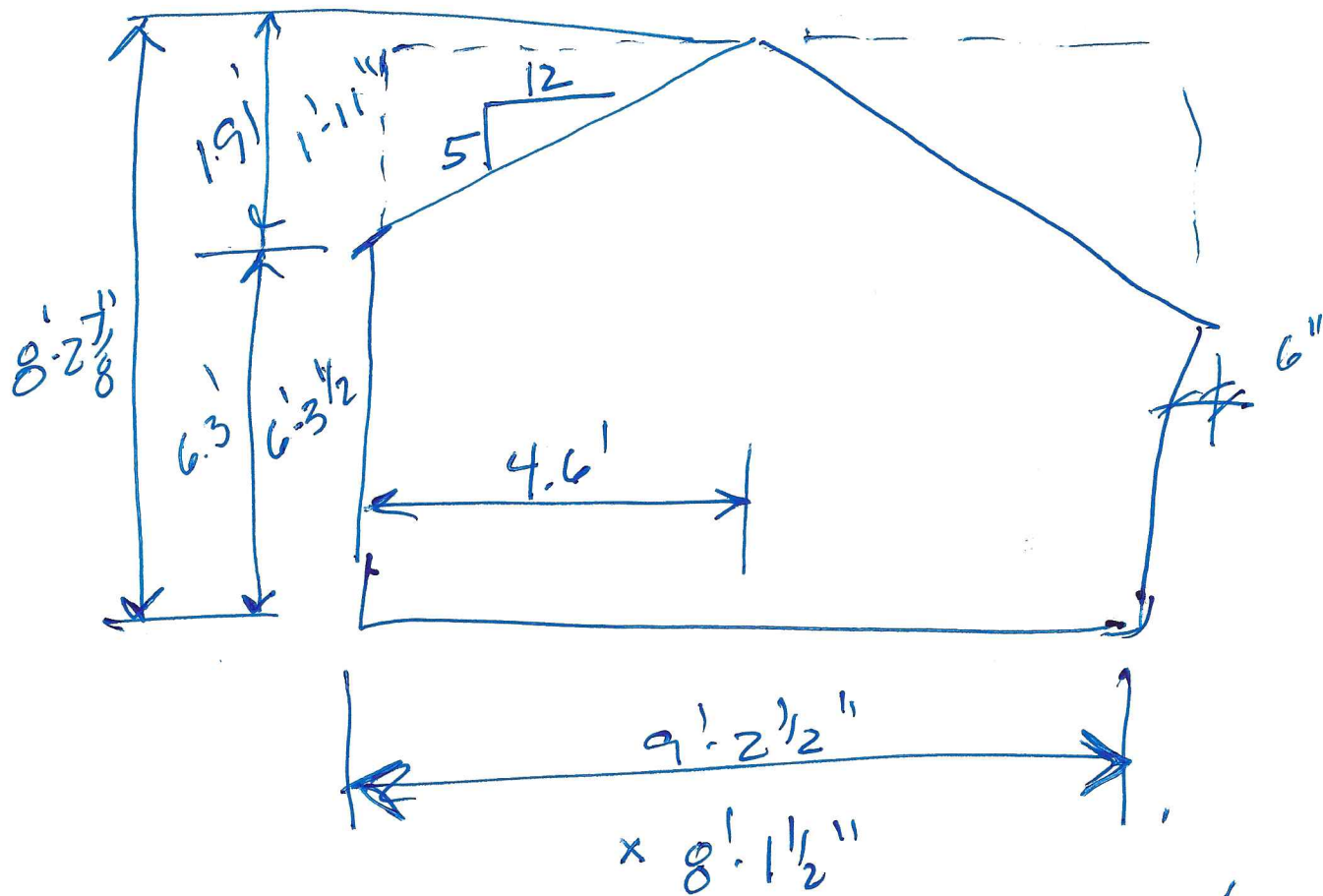
Authorized by \_\_\_\_\_ Date \_\_\_\_\_ Checked by \_\_\_\_\_ Date \_\_\_\_\_

LAYOUT









4 OCEAN. Lm

$$\frac{4.6 \times 5}{12} = 1.9167$$

$$= 23"$$

$$\sim 24"$$

$$\frac{1.25 \times 5}{12} = 0.52$$

$$= 6"$$

**VILLAGE OF BABYLON**  
**BABYLON, NEW YORK**  
**Telephone (631)-669-1300**

**Certificate of Occupancy No.** 20-00106

**Date:** 07/02/20

The Building Inspector of the Village of Babylon hereby certifies, that the following premises and buildings thereon, having reference to Building Permit Application No. 1502 conform to and comply with the provisions of the Building Zone Ordinance of the Village of Babylon.

**PREMISES:** 250 FIRE ISLAND AVE

**Section/Block/Lot:** 016.-03-015

**Description of Work** MAINTAIN PLAY STRUCTURE 8' X 8'


This certificate is issued to SULLIVAN, RICHARD J J  
address

250 FIRE ISLAND AVE  
BABYLON NY 11702

of the aforesaid premises and buildings,

in accordance with the provisions of the Building Zone Ordinance of the Village of Babylon

---

  
Stephen R. Fellman  
Building Inspector

**Babylon Village**  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

**INVOICE #**

20-00355

ACCOUNT ID: P-139154  
INVOICE DATE: 07/02/20  
DUE DATE: 07/02/20

SULLIVAN, RICHARD J J  
SULLIVAN, GAIL

250 FIRE ISLAND AVE  
, 11702

**PERMIT INFORMATION**

PERMIT NO: 20-00106  
LOCATION: 250 FIRE ISLAND AVE  
OWNER: SULLIVAN, RICHARD J J

QUANTITY/UNIT	SERVICE ID	DESCRIPTION	UNIT PRICE	AMOUNT
		Permit No: 20-00106		
1.0000	CP-FILIN	CONSTRUCTION PERMIT FILING FEE Permit No: 20-00106	85.000000	85.00
1.0000/COW	CP-RESID	RESIDENTIAL CONSTRUCT PERMIT Permit No: 20-00106	15.000000	15.00
			TOTAL DUE:	\$ 100.00
		Prn Payment: 07/02/20 CK 1765		-100.00
			BALANCE:	\$ 0.00

**PAYMENT COUPON - PLEASE DETACH AND RETURN THIS PORTION ALONG WITH YOUR PAYMENT**

Babylon Village  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

INVOICE #: 20-00355  
DESCRIPTION: Permit No: 20-00106  
ACCOUNT ID: P-139154  
DUE DATE: 07/02/20  
TOTAL DUE: \$ 0.00

SULLIVAN, RICHARD J J  
SULLIVAN, GAIL

250 FIRE ISLAND AVE  
, 11702



## VILLAGE OF BABYLON

Permit #: **20-00106**

Invoice ID: **20-00355**

Date Issued: **07/02/20**

Owner Name: **SULLIVAN, RICHARD JJ**

Owner Address:  
**250 FIRE ISLAND AVE  
BABYLON NY 11702**

Granted a type: **BUILDING PERMIT**

Property Location: **250 FIRE ISLAND AVE  
BABYLON, NEW YORK 11702**

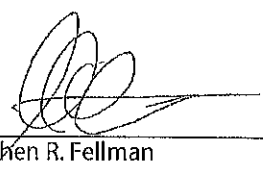
In the **VILLAGE OF BABYLON, NY** to expire: **12/29/20**

Section/Block/Lot **016.-03-015**

Pursuant to application, and plans approved by the Building Inspector.  
Amount paid by holder of permit as required by Ordinance.

Description of Work: **MAINTAIN PLAY STRUCTURE 8' X 8'**

Total Permit Fees:

  
Stephen R. Fellman

Per 

( This Permit may be Suspended or Terminated for any violation of the Ordinances of the VILLAGE OF BABYLON )

This permit must be kept on the premises until full completion of the work authorized.

**VILLAGE OF BABYLON**  
 153 West Main Street  
 Babylon, New York 11702  
 (631) 669-1300  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.)

Permit(s) requested (check one or more below)  
 Numbers refer to questions on right that must be answered.

- Building Permit  
☐ Commercial ☐ Industrial ☒ Residential  
☐ Main Building ☐ Addition 1-8  
☒ Accessory Building ☐ Addition 1-8  
☐ Interior Alteration ☐ Addition 1-8  
☐ Two-Family Special Permit 1-3, 7, 8  
☐ Change of Use or Occupancy 1-5, 7, 8  
☐ Fire Damage Repair 1-4, 8  
☐ Fireplace 3, 7  
☐ Board of Appeals 1-3, 7, 8  
☐ Swim/Pool ☐ In-Ground ☐ Above  
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☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation  
 (plus plumbing permit) 1-3, 6, 8  
☐ Other - Explain 1-8

102 - 16 - 3 - 15 Flood Zone \_\_\_\_\_  
 Section Block Lot  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
 Permit Number: \_\_\_\_\_  
 Current Zoning A-9 Approved By: \_\_\_\_\_ Date Checked: \_\_\_\_\_  
 Permit Application Denied: \_\_\_\_\_ Why? \_\_\_\_\_  
 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
 If yes, what conditions, if any, were set: \_\_\_\_\_  
 Board of Appeals Case #: \_\_\_\_\_  
 Pre-site inspection made by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approval for Issuance of Permit: \_\_\_\_\_ Date: 6/19/20  
 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy # \_\_\_\_\_

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

1. PRESENT USE of property YARD  
 2. PROPOSED USE PLAYHOUSE  
 3. DESCRIPTION OF PROPOSED WORK  
SMALL Playhouse for children / Grandchildren  
 4. FLOOR AREA to be constructed or altered: 8 x 8 = 64 sq ft Total Square Feet  
 5. SIZE of property 280 x 100 = 2800 sq. ft. or \_\_\_\_\_ Acres  
 6. HEIGHT of building from average grade to highest point 6' (From Floor) Feet  
 7. PROPERTY LOCATION \_\_\_\_\_  
☐ N ☐ S ☐ E ☒ W Side of FI AVE. St. Rd. Ave. 200' Feet  
 8. ORIGINAL CERTIFICATE OF OCCUPANCY # 1982?  
 Certified as: RESIDENCE Date: \_\_\_\_\_

**ARTICLE X — SECTION 1003 CERTIFICATE OF OCCUPANCY.**

1. **New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

**2. Change of Occupancy.**

(a) No change or use shall be made in a building hereafter erected or altered that is not consistent with the last issued certificate of occupancy, for such building unless a permit is secured. In case of an existing building, no change of occupancy that would bring it under some special provision of this ordinance shall be made unless the Building Inspector, upon inspection, finds out that such building conforms substantially to the provisions of this ordinance with respect to the proposed new occupancy and use, and issues a certificate of occupancy therefor.

(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name Richard J. Sullivan Jr.  
 Address 150 FIRE Island AVE  
BA-BYLON, N.Y. 11702  
 Phone # \_\_\_\_\_

Richard J. Sullivan Jr.  
 Signature of PROPERTY OWNER

Name \_\_\_\_\_  
 Address N/A  
 Phone # \_\_\_\_\_

Signature of CONTRACTOR  
 (If applicable)

County Home  
 Improvement License # \_\_\_\_\_

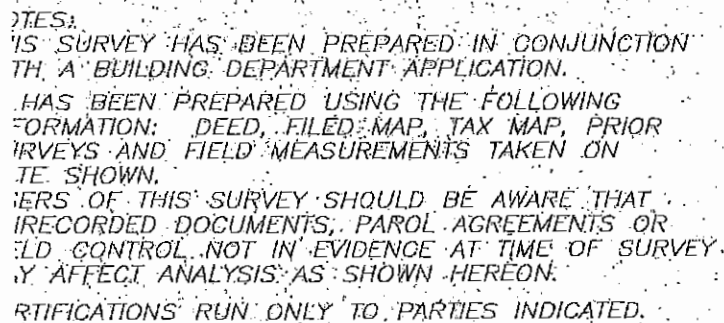
Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

Notary Public

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_

Notary Public





CERTIFIED ONLY TO:  
SULLIVAN

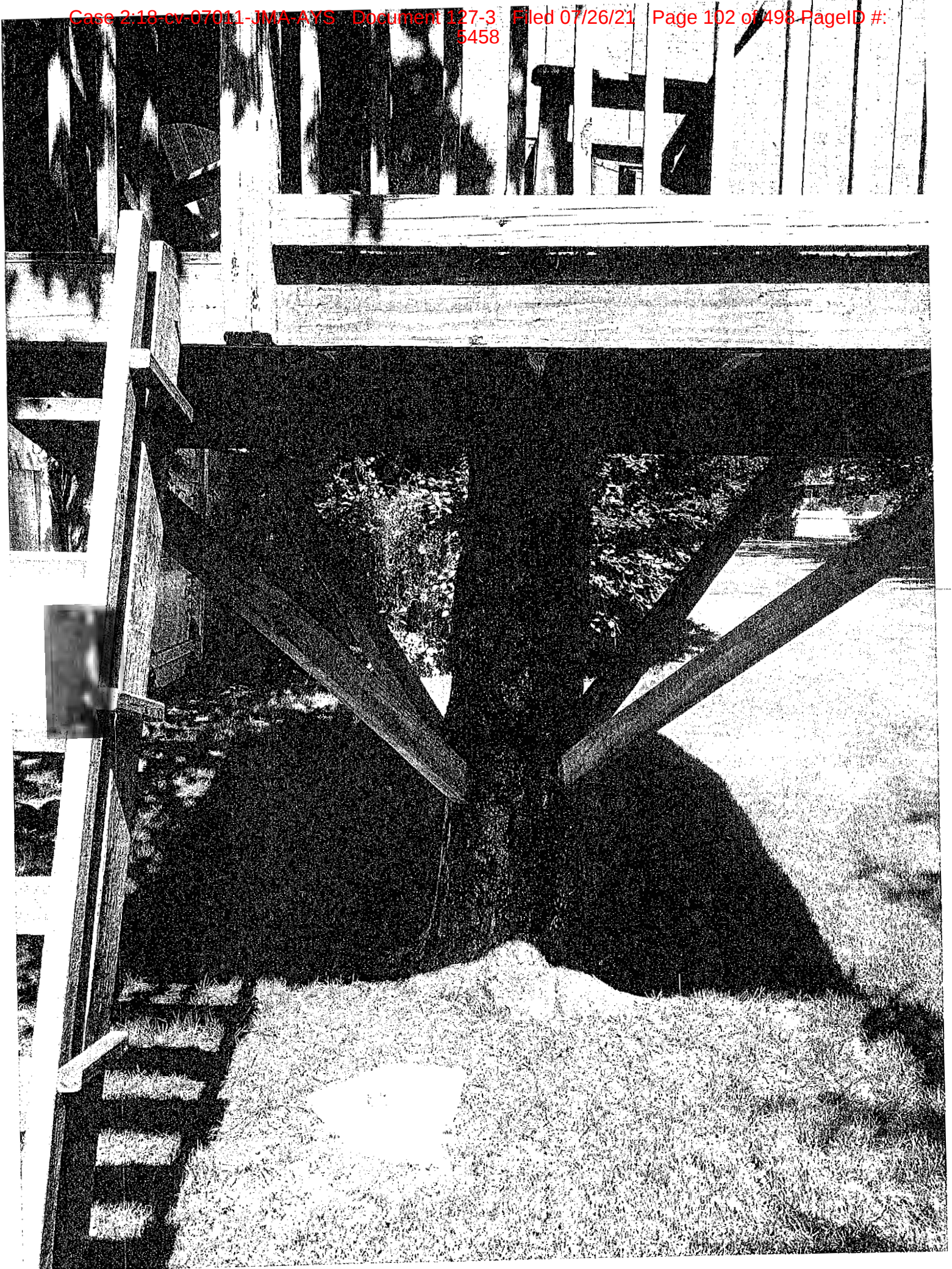




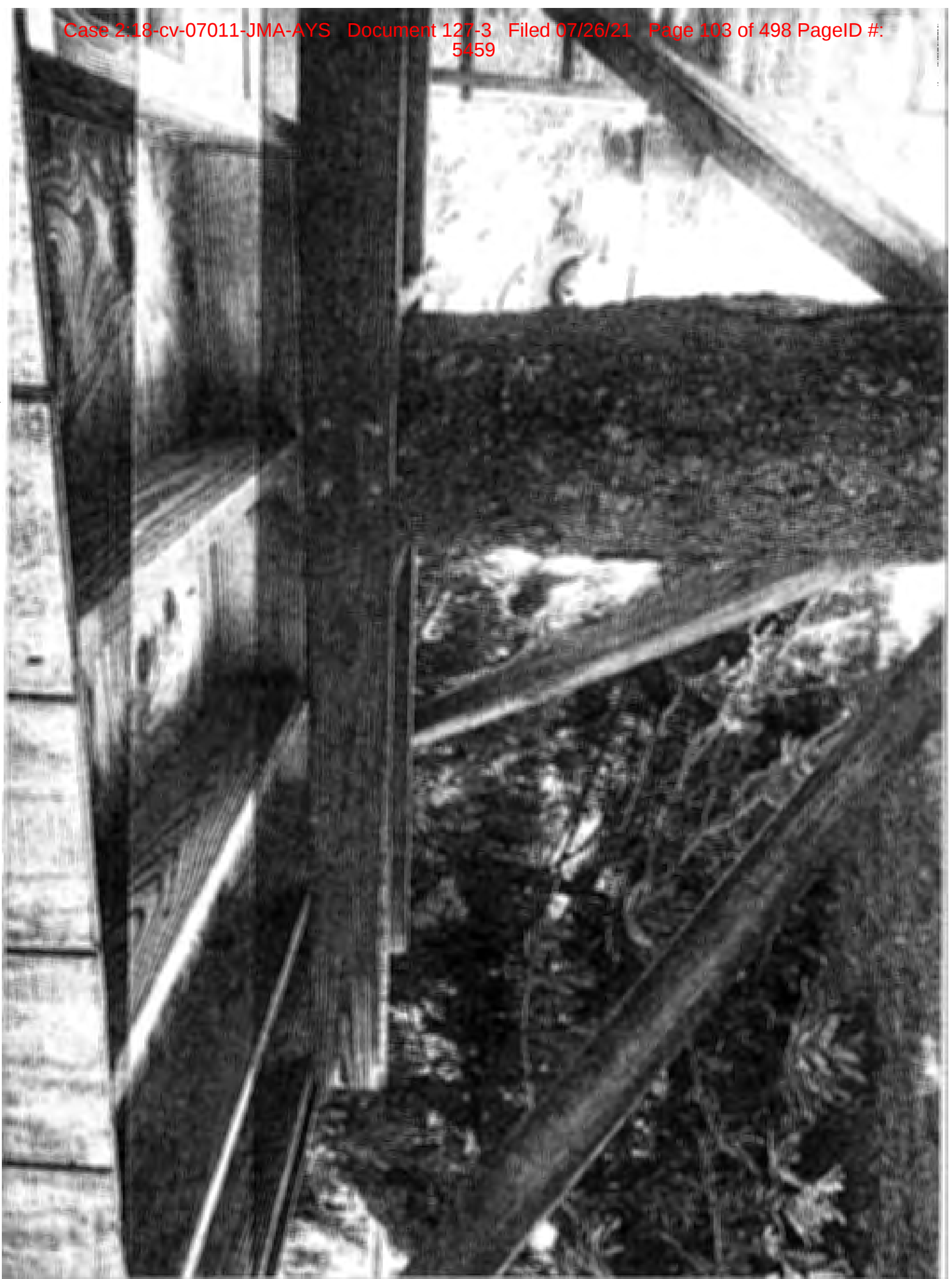














jyantz@villageofbabylonny.gov

---

**From:** jyantz@villageofbabylonny.gov  
**Sent:** Friday, June 19, 2020 11:53 AM  
**To:** 'STEVIE RAY'  
**Subject:** INSPECTIONS FOR FRIDAY JUNE 19

Here are your inspections,

140 Ralph Ave – rough plumb – Joe –

~~250 Fire Island Ave – measure/pics playhouse~~

37-45 E. Main St – Plumb (Babylon Mercantile) George –

63 Melbury – Footings – Joe .

Complaint re Shed at 85 Araca bad shape – from Laura at 88 Araca –

✓ NO LETTER TO REPAIR

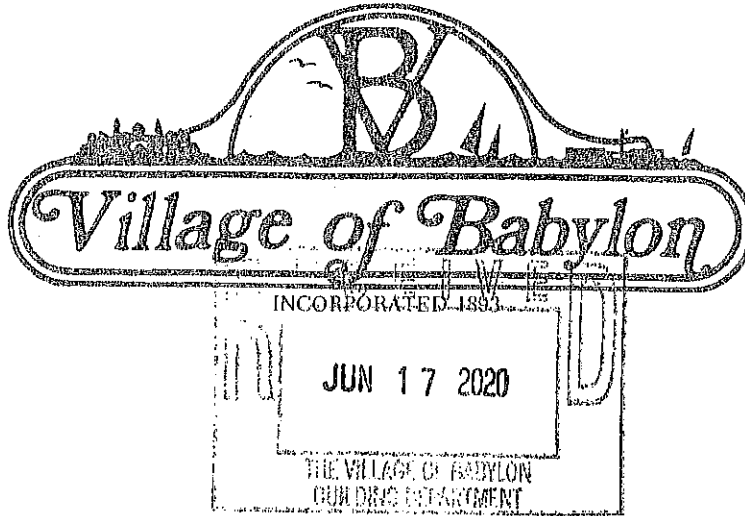
Also, Gerard sent over Accusatory, etc for you to sign re 83 Sumpwams

Regards,  
Jeanette Yantz  
Building Department  
Village of Babylon  
jyantz@villageofbabylonny.gov



OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

May 28, 2020

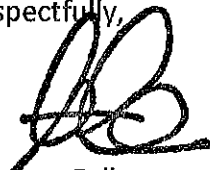
Mr. & Mrs. Sullivan  
250 Fire Island Avenue  
Babylon, NY 11702

Dear Mr. & Mrs. Sullivan,

It has come to our attention, that there is a "play house" structure in your yard that was built without a permit.

Please be advised that you must make application to the Building Department for said structure within 7 days of receiving this letter. Failure to do so will result in the issuance of a summons.

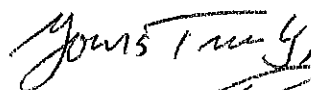
Respectfully,

  
Stephen Fellman  
Building Inspector

Dear Mr. Fellman,

June 9, 2020

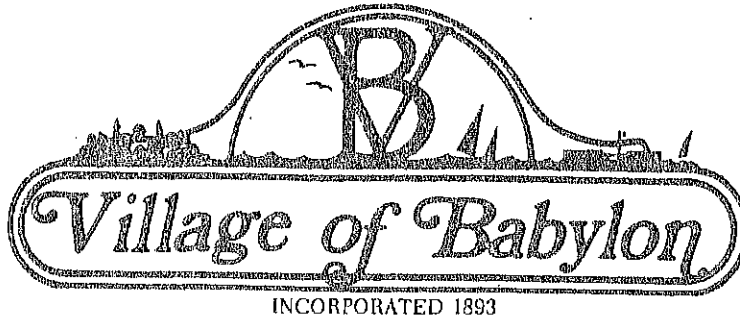
I send along the form you indicated, together with our survey. Please note I was unable to have my signature notarized due to my isolation due to the present Co-Vid 19 circumstances.

Yours Truly,  
 10/11/16 L.



OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

May 28, 2020


Mr. & Mrs. Sullivan  
250 Fire Island Avenue  
Babylon, NY 11702

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Respectfully,



Stephen Fellman  
Building Inspector





















































































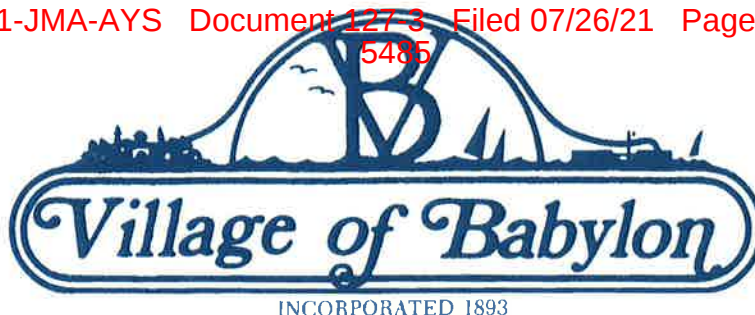






OFFICE OF THE  
VILLAGE CLERK

Jean Marie Parker



153 West Main Street  
Babylon Village  
New York 11702  
(631) 669-1500

December 1, 2020

Law Offices of Cory H. Morris  
135 Pinelawn Road  
Suite 250s  
Melville, New York 11747

Representing: John Lepper

Re: FOIL Letter dated 11/24/2020, received via email on the afternoon of 11/24/2020, and hand-delivered to Village Hall the afternoon of 12/1/2020, with the following request:

All records, inclusive of the building permit(s), pertaining to, related or created for the outdoor playground/treehouse structure located at Village of Babylon, 99 Park Avenue, Babylon, NY 11702.

Dear Mr. Morris,

Enclosed please find all records on file for the outdoor playground/treehouse structure located at 99 Park Avenue, Babylon, NY 11702.

As per your instructions, this formal written response to your FOIL request has also been emailed to you at [info@coryhmmorris.com](mailto:info@coryhmmorris.com) on 12/1/2020. If you have any questions or still wish to inspect the abovementioned records as indicated in #2 of your request please contact the Village Clerk's Office at 631-669-1500.

Sincerely,

A handwritten signature in cursive script that reads 'Jean Marie Parker'.

Jean Marie Parker  
Village Clerk

Enclosures (8)



# VILLAGE OF BABYLON

Permit #: **20-00101**

Invoice ID: **20-00350**

Date Issued: **06/30/20**

Owner Name: **BRUCKNER, THOMAS**

Owner Address:  
**99 PARK AVE  
BABYLON NY 11702**

Granted a type: **BUILDING PERMIT**

Property Location: **99 PARK AVE  
BABYLON, NEW YORK 11702**

In the **VILLAGE OF BABYLON**, NY to expire: **12/27/20**

Section/Block/Lot **006.-01-012**

Pursuant to application, and plans approved by the Building Inspector.  
Amount paid by holder of permit as required by Ordinance.

Description of Work: **ADDITION TO CURRENT PLAY STRUCTURE TOTALING 122.5 SF (MUST ADHERE TO FRONT YARD SET BACK 30')**

Total Permit Fees:

  
\_\_\_\_\_  
Stephen R. Fellman

Per  \_\_\_\_\_

( This Permit may be Suspended or Terminated for any violation of the Ordinances of the VILLAGE OF BABYLON )

This permit must be kept on the premises until full completion of the work authorized.



**Babylon Village**  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

**INVOICE #**

20-00350

ACCOUNT ID: P-137112

INVOICE DATE: 06/30/20

DUE DATE: 06/30/20

BURCKNER, THOMAS  
MELISSA MAKAREWICZ

99 PARK AVE  
, 11702

**PERMIT INFORMATION**

PERMIT NO: 20-00101

LOCATION: 99 PARK AVE

OWNER: BRUCKNER, THOMAS

QUANTITY/UNIT	SERVICE ID	DESCRIPTION	UNIT PRICE	AMOUNT
		Permit No: 20-00101		
1.0000	CP-FILIN	CONSTRUCTION PERMIT FILING FEE Permit No: 20-00101	85.000000	85.00
1.0000/COW	CP-RESID	RESIDENTIAL CONSTRUCT PERMIT Permit No: 20-00101	15.000000	15.00
			TOTAL DUE:	\$ 100.00
		Prn Payment: 06/30/20 CK 236		-100.00
			BALANCE:	\$ 0.00

**PAYMENT COUPON - PLEASE DETACH AND RETURN THIS PORTION ALONG WITH YOUR PAYMENT**

Babylon Village  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

INVOICE #: 20-00350  
DESCRIPTION: Permit No: 20-00101  
ACCOUNT ID: P-137112  
DUE DATE: 06/30/20  
TOTAL DUE: \$ 0.00

BURCKNER, THOMAS  
MELISSA MAKAREWICZ

99 PARK AVE  
, 11702





**VILLAGE OF BABYLON**  
**153 West Main Street**  
**Babylon, New York 11702**  
**(631) 669-1300**  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.

Permit(s) requested (check one or more below)  
 Numbers refer to questions on right that must be answered.

**Building Permit**

- ☐ Commercial ☐ Industrial ☐ Residential  
☐ Main Building ☐ Addition 1-8  
☐ Accessory Building ☐ Addition 1-8  
☐ Interior Alteration ☐ Addition 1-8  
☐ Two-Family Special Permit 1-3, 7, 8  
☐ Change of Use or Occupancy 1-5, 7, 8  
☐ Fire Damage Repair 1-4, 8  
☐ Fireplace 3, 7  
☐ Board of Appeals 1-3, 7, 8  
☐ Swim/Pool ☐ In-Ground ☐ Above  
☐ 4 foot safety fence required 1-5, 7, 8  
☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation  
 (plus plumbing permit) 1-3, 6, 8  
☒ Other - Explain 1-8

102 - (5488) - 12 Flood Zone \_\_\_\_\_  
 Section Block Lot  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
 Permit Number: \_\_\_\_\_  
 Current Zoning A-9 Approved By: \_\_\_\_\_ Date Checked: \_\_\_\_\_  
 Permit Application Denied \_\_\_\_\_ Why? \_\_\_\_\_  
 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
 If yes, what conditions, if any, were set: \_\_\_\_\_  
 Board of Appeals Case #: \_\_\_\_\_  
 Pre-site inspection made by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approval for Issuance of Permit: \_\_\_\_\_ Date: 6/26/20  
 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy # \_\_\_\_\_

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

1. PRESENT USE of property Single Family Home  
 2. PROPOSED USE Addition of a playground/swing set  
 3. DESCRIPTION OF PROPOSED WORK Add addition to current 30 sq foot playground  
 4. FLOOR AREA to be constructed or altered: 36 + new 86.5 = 122.5 Total Square Feet  
 5. SIZE of property (136) x (136.5) = 24,645 sq. ft. or 0.57 Acres  
 6. HEIGHT of building from average grade to highest point 12 Feet  
 7. PROPERTY LOCATION 99 Park Ave Babylon NY 11702  
☐ N ☒ XS ☐ E ☐ W Side of Park Avenue St.  
 Ave. \_\_\_\_\_ Feet

8. ORIGINAL CERTIFICATE OF OCCUPANCY # \_\_\_\_\_

Certified as: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED**

Subject to the

N.Y. State Building Code

Babylon Building Code

Ordinance

2012

2012

2012

2012

2012

2012

2012

2012

2012

2012

2012

2012

2012

2012

2012

**ARTICLE X - SECTION 1003 CERTIFICATE OF OCCUPANCY**

1. **New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector, and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

**2. Change of Occupancy.**

(a) No change or use shall be made in a building hereafter erected or altered that is not consistent with the last issued certificate of occupancy, for such building unless a permit is secured. In case of an existing building, no change of occupancy that would bring it under some special provision of this ordinance shall be made unless the Building Inspector, upon inspection, finds out that such building conforms substantially to the provisions of this ordinance with respect to the proposed new occupancy and use, and issues a certificate of occupancy therefor.

(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name Thomas C. Bruckner  
 Address 99 Park Ave  
Babylon NY 11702  
 Phone # 631-664-4269

Signature of PROPERTY OWNER

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19\_\_\_\_

Notary Public

Dated \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone # \_\_\_\_\_

Signature of CONTRACTOR  
 (if applicable)

County Home Improvement License # \_\_\_\_\_

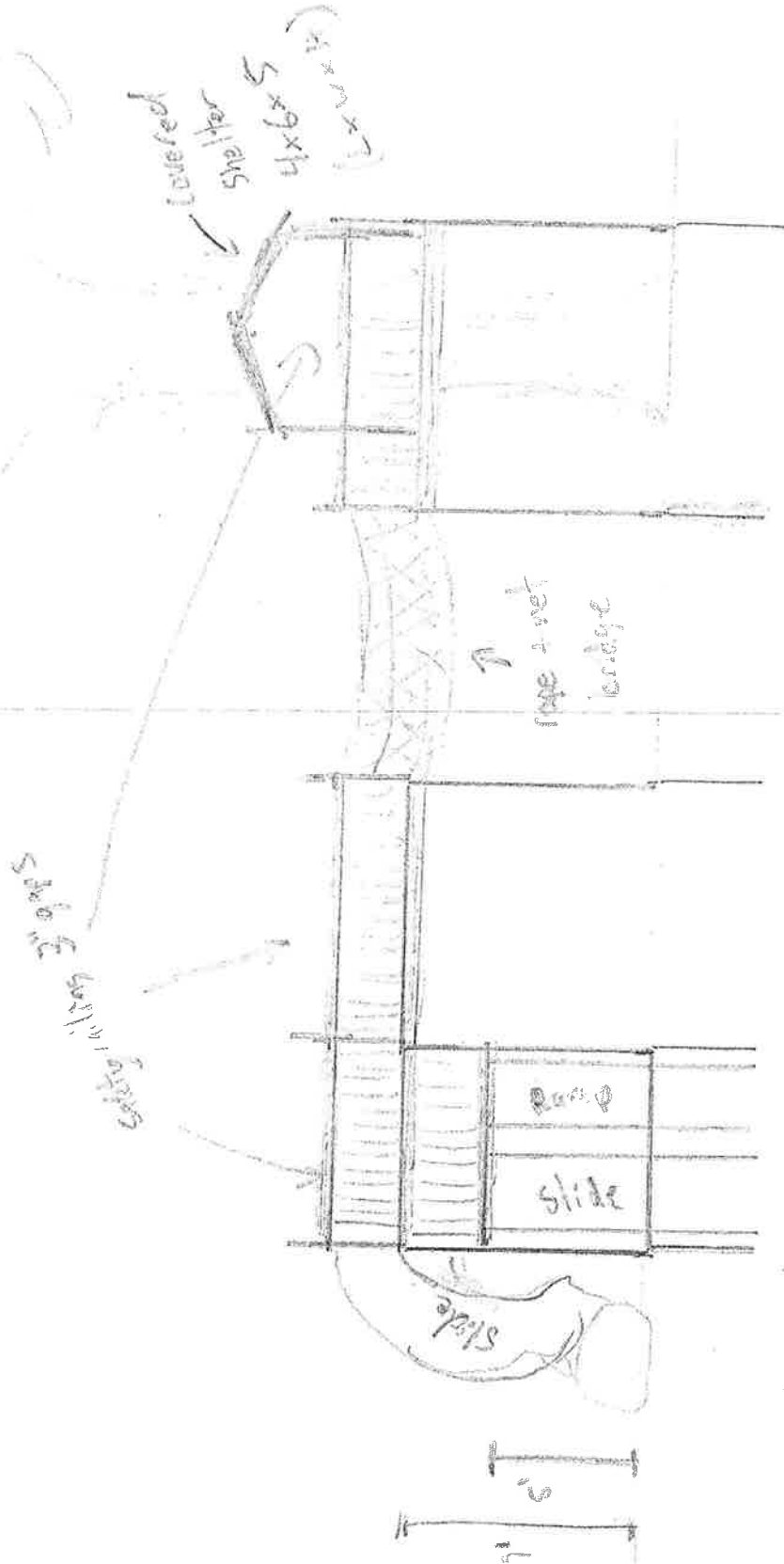
Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19\_\_\_\_

Notary Public



Thomas L. Bruckner  
 99 Park Ave  
 Babylon, NY  
 TCB

Scale 1/4" = 0.5' or 6"

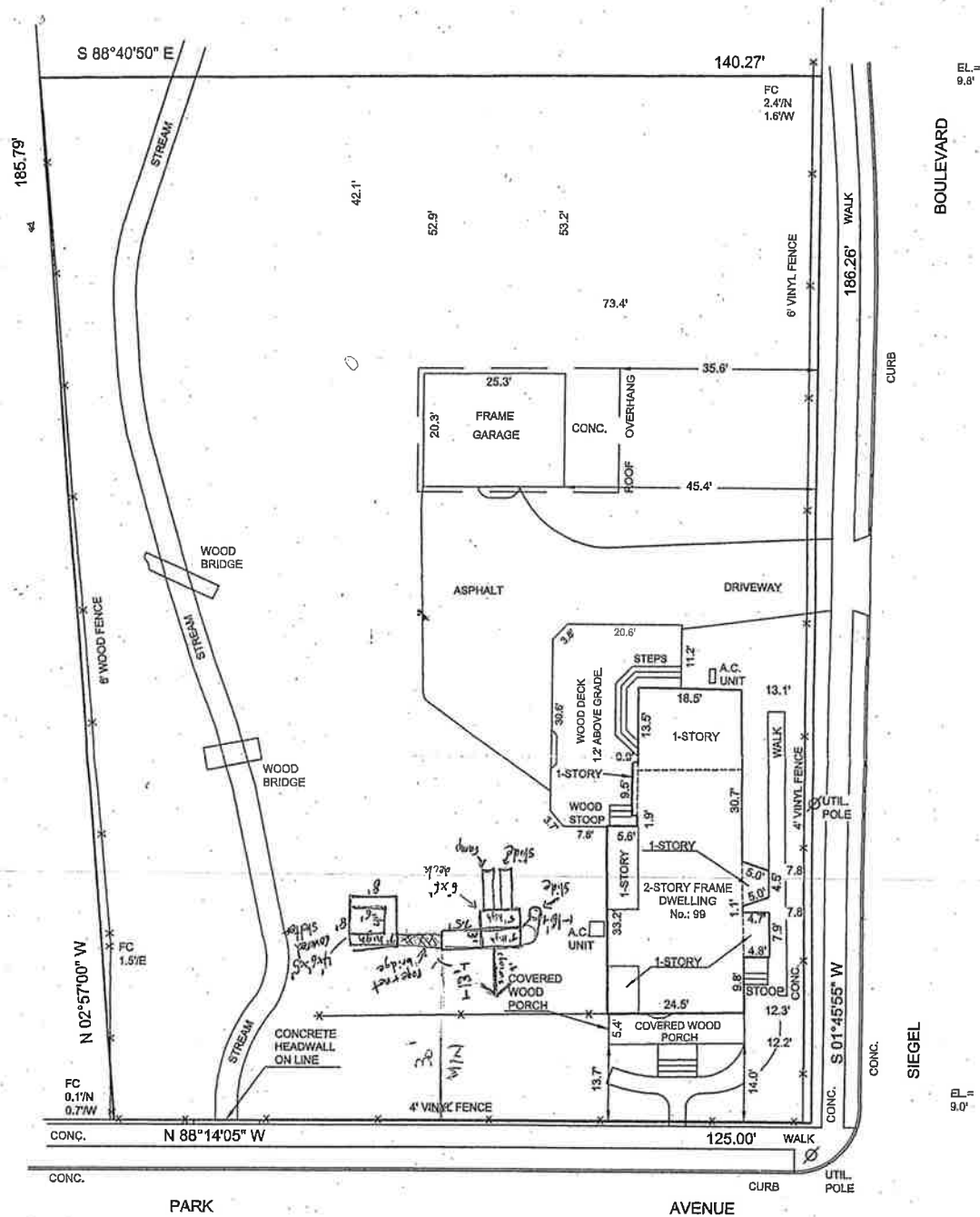


\* All posts  
 sunk 3' in  
 ground in concrete

Preexisting  
 36 sq ft Play ground

Proposed  
 36.5 sq ft addition





SURVEY OF PROPERTY  
SITUATED IN  
THE INCORPORATED VILLAGE OF BABYLON  
TOWN OF BABYLON SUFFOLK Co.  
NEW YORK  
SCTM No.: 102-6-1-12

GARAGE RIDGE 14.9' ABOVE GRADE.  
HOUSE RIDGE ELEVATION = 39.0'  
ALL ELEVATIONS ARE IN NAVD 1988 DATUM.

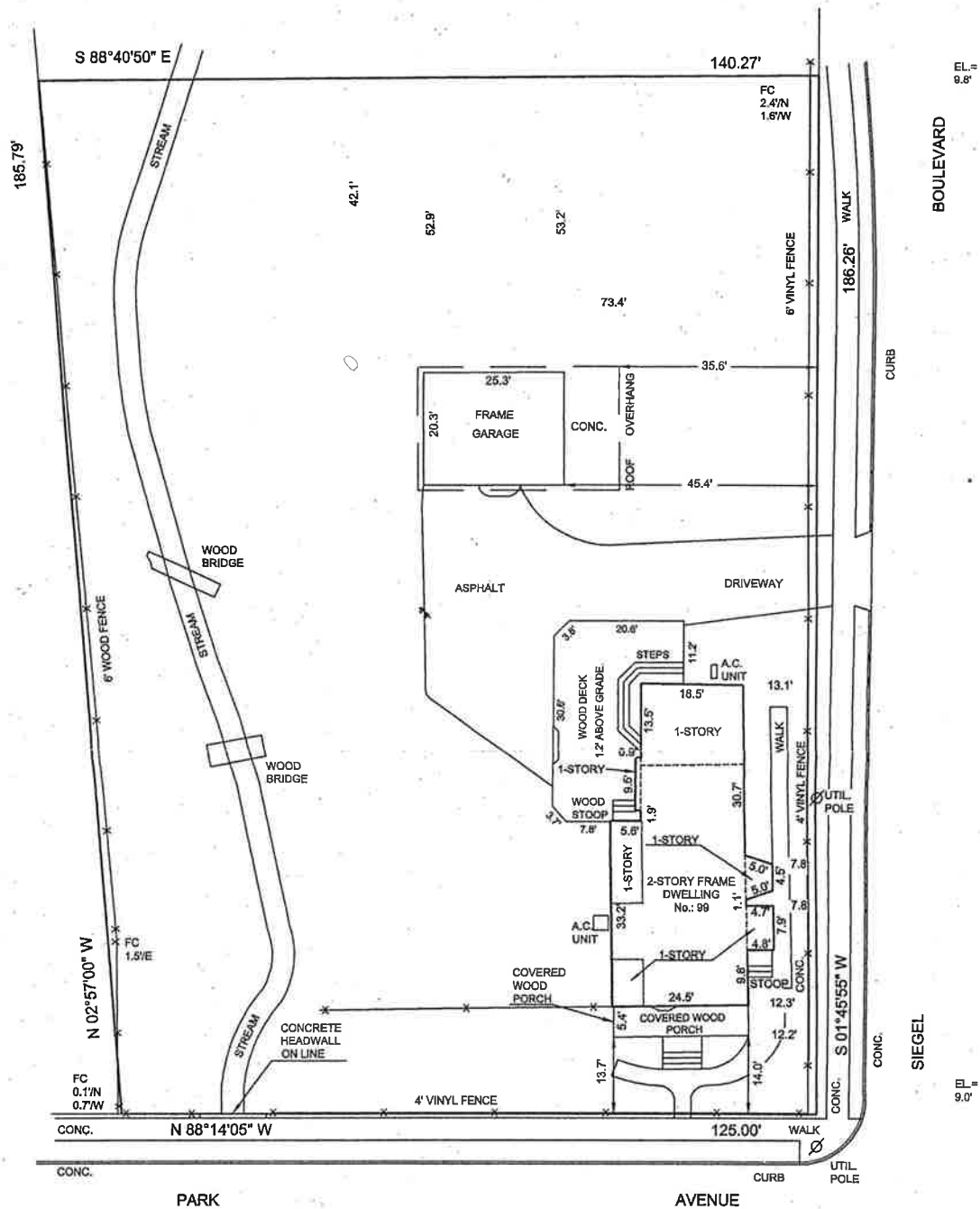
CERTIFIED TO:  
THOMAS C. AND MELISSA BRUCKNER



A.C. UNITS  
ADDED: 04/10/2017  
UPDATED: 09/23/2016

WILLIAM T. HOLGAN  
LICENSED LAND SURVEYOR  
41 SMITH STREET  
BABYLON, NEW YORK 11702  
631-321-4732  
SCALE: 1"=20'  
DATE: 01/18/2007





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THE INCORPORATED VILLAGE OF BABYLON  
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SCALE: 1"=20'  
DATE: 01/18/2007



[jyantz@villageofbabylonny.gov](mailto:jyantz@villageofbabylonny.gov)

Pls advise

**From:** [jyantz@villageofbabylonny.gov](mailto:jyantz@villageofbabylonny.gov)  
**Sent:** Friday, August 28, 2020 12:20 PM  
**To:** 'STEVIE RAY'  
**Subject:** INSPECTIONS FRIDAY, AUGUST 28

Can you please call Christine, W&M Fire Protection, question about sprinkler system for single family home – 973-768-2348 ✓

Did you tell 184 E. Main Street that you would inspect tank abandonment Saturday morning? If so I just received permit app, should I process? ✓

Here are your inspections:

59 Araca Road – Framing/Strapping – call Jim Jackson on way 631-872-0268 ✓

99 Park Avenue – Play Structure ✓ 20 – 00101

83 Lincoln Avenue – Framing – John ✓

N. Railroad and Ralph – Cell Tower – Final – Leo 347-804-3121 ✓

73 The Crescent – Final Kitchen – Tom – 516-322-8758 ✓

23 Waters Edge Court – Rebar – John – 631-601-7990 ✓

36 Waterman Street – Removal of second kitchen – Anthony Bottan – 631-312-1148 ✓

Regards,  
Jeanette Yantz  
Building Department  
Village of Babylon  
[jyantz@villageofbabylonny.gov](mailto:jyantz@villageofbabylonny.gov)



# VILLAGE OF BABYLON

## Certificate of Completion

Permit #20-00101

Date: September 9, 2020


Owner Name: Thomas Bruckner

Owner Address: 99 Park Avenue, Babylon, NY

*Property Location: 99 Park Avenue, Babylon, NY*

Section 006 Block 01 Lot 012

Description of Work: **ADDITION TO CURRENT PLAY STRUCTURE TOTALING 122.5 SF**

  
\_\_\_\_\_  
Stephen Fellman  
Building Inspector





FROM: Village of Babylon  
153 West Main Street  
Babylon, New York 11702

TO:

Law Offices of Cory H. Morris  
135 Pinelawn Road  
Suite 250s  
Melville, New York 11747



## VILLAGE OF BABYLON

Permit #: **20-00101**

Invoice ID: **20-00350**

Date Issued: **06/30/20**

Owner Name: **BRUCKNER, THOMAS**

Owner Address:

**99 PARK AVE  
BABYLON NY 11702**

Granted a type: **BUILDING PERMIT**

Property Location: **99 PARK AVE  
BABYLON, NEW YORK 11702**

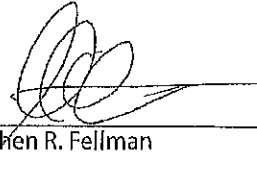
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Section/Block/Lot **006.-01-012**

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Total Permit Fees:

  
Stephen R. Fellman

Per 

( This Permit may be Suspended or Terminated for any violation of the Ordinances of the VILLAGE OF BABYLON )

This permit must be kept on the premises until full completion of the work authorized.



Babylon Village  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

INVOICE #

20-00350

ACCOUNT ID: P-137112  
INVOICE DATE: 06/30/20  
DUE DATE: 06/30/20

BURCKNER, THOMAS  
MELISSA MAKAREWICZ

99 PARK AVE  
, 11702

PERMIT INFORMATION

PERMIT NO: 20-00101  
LOCATION: 99 PARK AVE  
OWNER: BRUCKNER, THOMAS

QUANTITY/UNIT	SERVICE ID	DESCRIPTION	UNIT PRICE	AMOUNT
		Permit No: 20-00101		
1.0000	CP-FILIN	CONSTRUCTION PERMIT FILING FEE Permit No: 20-00101	85.000000	85.00
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			TOTAL DUE:	\$ 100.00
		Prn Payment: 06/30/20 CK 236		-100.00
			BALANCE:	\$ 0.00

PAYMENT COUPON - PLEASE DETACH AND RETURN THIS PORTION ALONG WITH YOUR PAYMENT

Babylon Village  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

INVOICE #: 20-00350  
DESCRIPTION: Permit No: 20-00101  
ACCOUNT ID: P-137112  
DUE DATE: 06/30/20  
TOTAL DUE: \$ 0.00

BURCKNER, THOMAS  
MELISSA MAKAREWICZ

99 PARK AVE  
, 11702





**VILLAGE OF BABYLON**  
**153 West Main Street**  
**Babylon, New York 11702**  
**(631) 669-1300**  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

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- ☐ Commercial ☐ Industrial ☐ Residential  
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☐ Swim/Pool ☐ In-Ground ☐ Above  
☐ 4 foot safety fence required 1-3, 7, 8  
☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation (plus plumbing permit) 1-3, 6, 8  
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102 - 6 - 1 - 12 Flood Zone  
 Section Block Lot  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
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 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
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 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy #: \_\_\_\_\_

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

1. PRESENT USE of property Single Family Home  
 2. PROPOSED USE Addition of a playground/swing set  
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 7. PROPERTY LOCATION 99 Park Ave Babylon NY 11702  
☐ N ☒ S ☐ E ☐ W Side of Park Avenue St. Id. Ave. Feet

**B. ORIGINAL CERTIFICATE OF OCCUPANCY #**

Certified as: \_\_\_\_\_ Date: \_\_\_\_\_

**APPROVED**

**ARTICLE X - SECTION 1003 CERTIFICATE OF OCCUPANCY**

1. **New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code, and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector, and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

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I swear that this application is a true and complete statement of all proposed work on the described premises.

Name Thomas C. Bruckner  
 Address 99 Park Ave  
Babylon NY 11702  
 Phone # 631-664-4269

Signature of PROPERTY OWNER

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19\_\_\_\_

Notary Public

Dated \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone # \_\_\_\_\_

Signature of CONTRACTOR  
 (if applicable)

County Home Improvement License # \_\_\_\_\_

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Notary Public



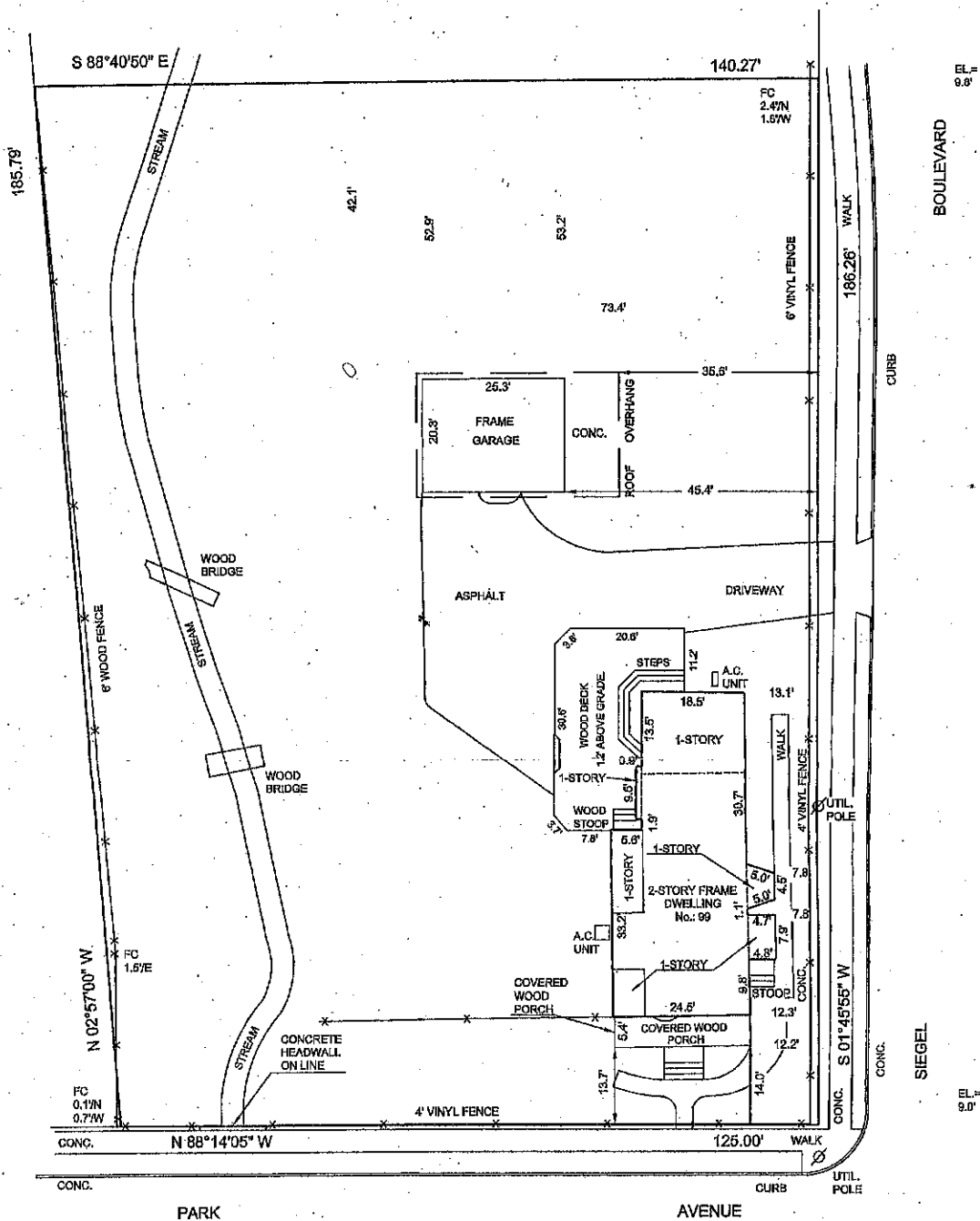






WILLIAM T. HOLGAN  
LICENSED LAND SURVEYOR  
41 SMITH STREET  
BABYLON, NEW YORK 11702  
631-321-4732  
SCALE: 1"=20'  
DATE: 01/18/2007

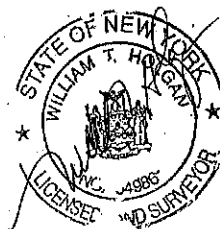




SURVEY OF PROPERTY  
SITUATED IN  
THE INCORPORATED VILLAGE OF BABYLON  
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A.C. UNITS  
ADDED: 04/10/2017  
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631-321-4732  
SCALE: 1"=20'  
DATE: 01/18/2007



Pls advise

jjyantz@villageofbabylonny.gov

**From:** jjyantz@villageofbabylonny.gov  
**Sent:** Friday, August 28, 2020 12:20 PM  
**To:** 'STEVIE RAY'  
**Subject:** INSPECTIONS FRIDAY, AUGUST 28

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Regards,  
Jeanette Yantz  
Building Department  
Village of Babylon  
jjyantz@villageofbabylonny.gov



# VILLAGE OF BABYLON

## Certificate of Completion

Permit #20-00101

Date: September 9, 2020


Owner Name: Thomas Bruckner

Owner Address: 99 Park Avenue, Babylon, NY

*Property Location: 99 Park Avenue, Babylon, NY*

Section 006 Block 01 Lot 012

Description of Work: **ADDITION TO CURRENT PLAY STRUCTURE TOTALING 122.5 SF**

  
\_\_\_\_\_  
Stephen Fellman  
Building Inspector



















OFFICE OF THE  
VILLAGE CLERK

Jean Marie Parker



153 West Main Street  
Babylon Village  
New York 11702  
(631) 669-1500

December 16, 2020

Law Offices of Cory H. Morris  
135 Pinelawn Road  
Suite 250s  
Melville, New York 11747

Representing: John Lepper

Re: FOIL Letter dated 12/9/2020, sent to the Village Clerk at 5:30 PM on 12/09/2020, via e-mail and hand-delivered to Village Hall the afternoon of 12/16/2020, with the following request:

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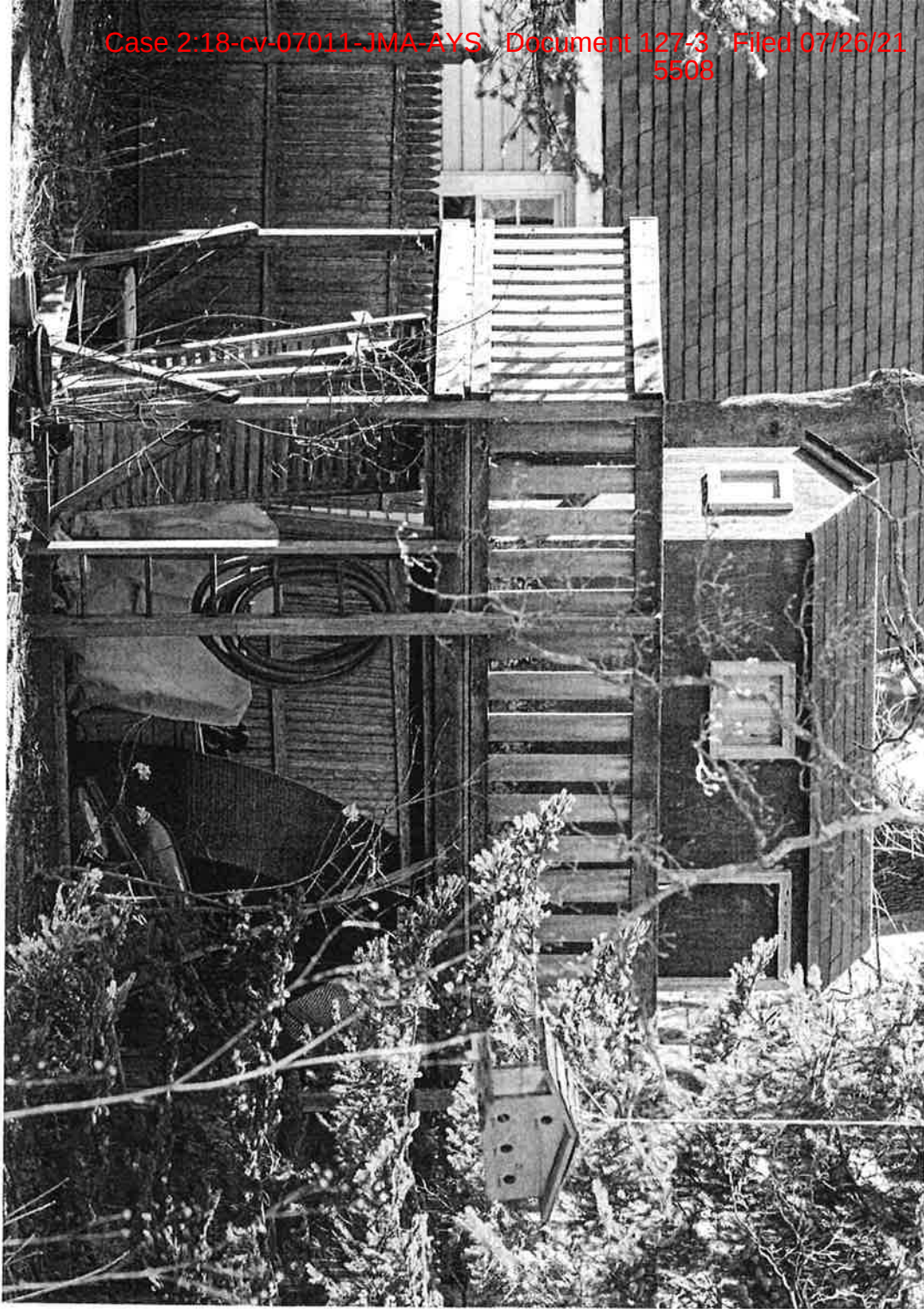
Sincerely,

A handwritten signature in blue ink that reads 'Jean Marie Parker'. The signature is written in a cursive, flowing style.

Jean Marie Parker  
Village Clerk

Enclosures (12)



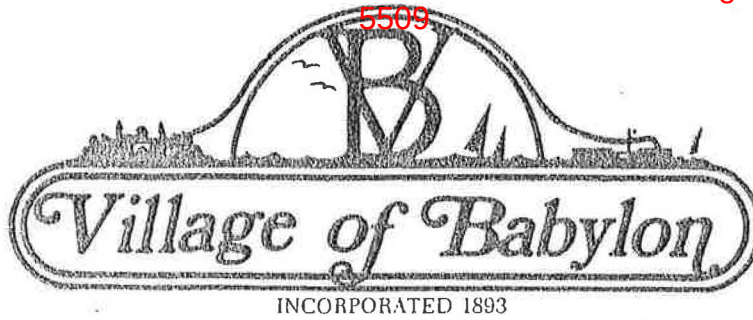


63  
upside down



OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

February 20, 2020

Mr. & Mrs. Gary Repetto  
63 Wyandanch Avenue  
Babylon, NY 11702

Dear Mr. & Mrs. Repetto,

It has come to our attention, that there is a "play house" structure in your yard that was built without a permit.

Please be advised that you must make application to the Building Department for said structure within 7 days of receiving this letter. Failure to do so will result in the issuance of a summons.

Respectfully,

  
Stephen Fellman  
Building Inspector

Mr. Repetto  
63 Wyandanch  
631-806-3919

SF - Plz call -  
Ar - in ev 12  
2022011



OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

February 25, 2020

Mr. Gary Repetto  
63 Wyandanch Avenue  
Babylon, NY 11702

Dear Mr. Repetto,

Per our telephone conversation today, you have agreed that the "play house" structure in your yard will be removed upon your return from your trip.

Kindly contact our office upon removal for inspection.

Regards,

  
Stephen Fellman  
Building Inspector

Leaving on 2/28  
for Florida -  
will be gone  
30 Days.  
Code -  
365-26.





153 West Main Street  
Babylon Village, New York 11702  
(631) 669-1300 Fax (631) 669-1236 [www.villageofbabylonny.gov](http://www.villageofbabylonny.gov)  
INCORPORATED 1893

## NOTICE OF VIOLATION

Name: Gary Repetto

Address: 63 Wyandanch Avenue, Babylon, NY

Section 004 Block 01 Lot 042.002

Place of Occurrence: 63 Wyandanch Avenue, Babylon, NY

PLEASE TAKE NOTICE there exists a violation of:

**Babylon Village Code Section 365-26**

N.Y.S. Building Code Section

Multiple Residence Law

at the premises described above in that: Construction without a permit

**Please apply for building permit for the "play house" structure in your yard or remove**

Please be advised that the aforementioned violations must be corrected before the date of June 26, 2020  
or an appearance ticket may be issued.

If you have any questions or we can assist you' in any way, please contact us at the above number.

Code Enforcement Officer

Stephen Fellman

Building Inspector

Dated: June 17, 2020



**VILLAGE OF BABYLON**  
153 West Main Street  
Babylon, New York 11702  
(631) 669-1300  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.)

Permit(s) requested (check one or more below)  
Numbers refer to questions on right that must be answered.

- Building Permit**  
☐ Commercial ☐ Industrial ☒ Residential  
☐ Main Building ☐ Addition 1-8  
☒ Accessory Building ☐ Addition 1-8  
☐ Interior Alteration ☐ Addition 1-8  
☐ Two-Family Special Permit 1-3, 7, 8  
☐ Change of Use or Occupancy 1-5, 7, 8  
☐ Fire Damage Repair 1-4, 8  
☐ Fireplace 3, 7  
☐ Board of Appeals 1-3, 7, 8  
☐ Swim/Pool ☐ In-Ground ☐ Above  
     4 foot safety fence required 1-5, 7, 8  
☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation  
     (plumb plumbing permit) 1-3, 6, 8  
☐ Other - Explain 1-8

Section \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
 Permit Number: \_\_\_\_\_  
 Current Zoning A-7 Approved By: \_\_\_\_\_ Date Checked: \_\_\_\_\_  
 Permit Application Denied \_\_\_\_\_ Why? \_\_\_\_\_  
 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
 If yes, what conditions, if any, were set: \_\_\_\_\_  
 Board of Appeals Case #: \_\_\_\_\_  
 Pre-site inspection made by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approval for Issuance of Permit: \_\_\_\_\_ Date: 6/24/20  
 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy # \_\_\_\_\_

Update survey to follow

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

- PRESENT USE of property Residential
- PROPOSED USE \_\_\_\_\_
- DESCRIPTION OF PROPOSED WORK maintain play structure
- FLOOR AREA to be constructed or altered: \_\_\_\_\_ Total Square Feet \_\_\_\_\_
- SIZE of property ( ) x ( ) = \_\_\_\_\_ sq. ft. or \_\_\_\_\_ Acres
- HEIGHT of building from average grade to highest point \_\_\_\_\_ Feet
- PROPERTY LOCATION 63 Wyandanch Ave / 59 Wyandanch Ave  
☐ N ☐ S ☐ E ☐ W Side of \_\_\_\_\_ St. Rd. Ave. Feet
- ORIGINAL CERTIFICATE OF OCCUPANCY # \_\_\_\_\_  
 Certified as: \_\_\_\_\_ Date: \_\_\_\_\_

BPH 13311

**ARTICLE X — SECTION 1003 CERTIFICATE OF OCCUPANCY.**

**1. New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

**2. Change of Occupancy.**

(a) No change or use shall be made in a building hereafter erected or altered that is not consistent with the last issued certificate of occupancy, for such building unless a permit is secured. In case of an existing building, no change of occupancy that would bring it under some special provision of this ordinance shall be made unless the Building Inspector, upon inspection, finds out that such building conforms substantially to the provisions of this ordinance with respect to the proposed new occupancy and use, and issues a certificate of occupancy therefor.

(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name Gary P. Repetto  
 Address 63 Wyandanch Ave  
Babylon, NY 11702  
 Phone # 631-806-3919  
 Signature of PROPERTY OWNER \_\_\_\_\_

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone # \_\_\_\_\_  
 Signature of CONTRACTOR (if applicable) \_\_\_\_\_

County Home Improvement License # \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Notary Public

Notary Public

B100



**VILLAGE OF BABYLON**  
**153 West Main Street**  
**Babylon, New York 11702**  
**(631) 669-1300**  
**BUILDING DEPARTMENT**  
**BUILDING PERMIT FORM**

Application is hereby made to Code Enforcement Official (Building Inspector) of the Village of Babylon, NY, for the approval of plans and specifications to build or install as herein described. The applicant agrees to comply with all the provisions of the code of the Village of Babylon and/or any other applicable Federal, State and Local codes.

NOTE: Survey or site plans must accompany permit application. (For commercial or industrial applications, consult the Village of Babylon Planning Board.

Permit(s) requested (check one or more below)  
 Numbers refer to questions on right that must be answered.

**Building Permit**

- ☐ Commercial ☐ Industrial ☒ Residential  
☐ Main Building ☐ Addition 1-8  
☒ Accessory Building ☐ Addition 1-8  
☐ Interior Alteration ☐ Addition 1-8  
☐ Two-Family Special Permit 1-3, 7, 8  
☐ Change of Use or Occupancy 1-5, 7, 8  
☐ Fire Damage Repair 1-4, 8  
☐ Fireplace 3, 7  
☐ Board of Appeals 1-3, 7, 8  
☐ Swim/Pool ☐ In-Ground ☐ Above  
 4 foot safety fence required 1-5, 7, 8  
☐ Demolition (Valid only 6 mos.) 1-3, 7, 8  
☐ Underground Tank Installation  
 (plus plumbing permit) 1-3, 6, 8  
☐ Other - Explain 1-8

**ARTICLE X — SECTION 1003 CERTIFICATE OF OCCUPANCY.**

**1. New Building** No Building hereafter erected, enlarged, extended or altered shall be occupied or used, in whole or in part until a certificate of occupancy, certifying that such building conforms to the approved plans and the requirements of this code and stating the purpose for which the building may be used in its several parts, and any special stipulations, shall have been issued by the Building Inspector and signed by him or his authorized assistant. If the occupancy or use of a building is not discontinued during the work of alteration, the occupancy or use of the building shall not continue for more than thirty days after the completion of the alteration unless a certificate shall have been issued.

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(b) The reestablishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

I swear that this application is a true and complete statement of all proposed work on the described premises.

Name Gary F. Repetto  
 Address 63 Wyandanch Ave  
Babylon, NY 11702  
 Phone # 631-806-3919

Signature of PROPERTY OWNER

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone # \_\_\_\_\_

Signature of CONTRACTOR  
 (if applicable)

County Home  
 Improvement License # \_\_\_\_\_

Sworn to before me this 11th  
 day of December 2020

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_ 19\_\_\_\_

[Signature]  
 Notary Public

Graceanne Sawczyn  
 Notary Public, State of New York  
 No. 01SA6225053

Qualified in Suffolk County

7/19/22

FOR OFFICE USE ONLY

Section 9513 Block \_\_\_\_\_ Lot \_\_\_\_\_  
 Estimated Value of Construction \$ \_\_\_\_\_ Fee: \_\_\_\_\_  
 Permit Number: \_\_\_\_\_  
 Current Zoning A-7 Approved By: \_\_\_\_\_ Date Checked: \_\_\_\_\_  
 Permit Application Denied \_\_\_\_\_ Why? \_\_\_\_\_  
 Is this permit a result of a Zoning Board of Appeals approval? ☐ Yes ☐ No  
 If yes, what conditions, if any, were set: \_\_\_\_\_  
 Board of Appeals Case #: \_\_\_\_\_  
 Pre-site inspection made by: [Signature] Date: \_\_\_\_\_  
 Approval for Issuance of Permit: [Signature] Date: 6/24/20  
 Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Checked by: \_\_\_\_\_  
 Certificate of Occupancy # \_\_\_\_\_

Update survey to follow

Answer, in black ink, questions numbered next to type of PERMIT(S) REQUESTED.

1. PRESENT USE of property Residential  
 2. PROPOSED USE \_\_\_\_\_  
 3. DESCRIPTION OF PROPOSED WORK Maintain Play Structure

4. FLOOR AREA to be constructed or altered: \_\_\_\_\_ Total Square Feet  
 5. SIZE of property ( ) x ( ) = \_\_\_\_\_ sq. ft. or \_\_\_\_\_ Acres  
 6. HEIGHT of building from average grade to highest point \_\_\_\_\_ Feet  
 7. PROPERTY LOCATION 63 Wyandanch Ave / 69 Wyandanch Ave  
☐ N ☐ S ☐ E ☐ W Side of \_\_\_\_\_ St. Rd. Ave. Feet

8. ORIGINAL CERTIFICATE OF OCCUPANCY # \_\_\_\_\_  
 Certified as: \_\_\_\_\_ Date: \_\_\_\_\_

BPH 13311



**Babylon Village**  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

**INVOICE #**

20-00344

ACCOUNT ID: P-136577

INVOICE DATE: 06/25/20

DUE DATE: 06/25/20

REPETTO, GARY P  
CRISTINA REPETTO

63 WYANDANCH AVE  
, 11702

**PERMIT INFORMATION**

PERMIT NO: 20-00098

LOCATION: 63 WYANDANCH AVE

OWNER: REPETTO, GARY P

QUANTITY/UNIT	SERVICE ID	DESCRIPTION	UNIT PRICE	AMOUNT
		Permit No: 20-00098		
1.0000	CP-FILIN	CONSTRUCTION PERMIT FILING FEE Permit No: 20-00098	85.000000	85.00
1.0000/COW	CP-RESID	RESIDENTIAL CONSTRUCT PERMIT Permit No: 20-00098	15.000000	15.00
			TOTAL DUE:	\$ 100.00
				<hr/>
Prn Payment: 06/25/20 CK 8129				-100.00
			BALANCE:	\$ 0.00
				<hr/>

**PAYMENT COUPON - PLEASE DETACH AND RETURN THIS PORTION ALONG WITH YOUR PAYMENT**

Babylon Village  
VILLAGE OF BABYLON  
153 WEST MAIN STREET  
BABYLON, NY 11702

REPETTO, GARY P  
CRISTINA REPETTO

63 WYANDANCH AVE  
, 11702

INVOICE #: 20-00344  
DESCRIPTION: Permit No: 20-00098  
ACCOUNT ID: P-136577  
DUE DATE: 06/25/20  
TOTAL DUE: \$ 0.00





# VILLAGE OF BABYLON

Permit #: **20-00098**

Invoice ID: **20-00344**

Date Issued: **06/25/20**

Owner Name: **REPETTO, GARY P**

Owner Address:  
**63 WYANDANCH AVENUE  
BABYLON NY 11702**

Granted a type: **BUILDING PERMIT**

Property Location: **63 WYANDANCH AVE  
BABYLON, NEW YORK 11702**

In the **VILLAGE OF BABYLON**, NY to expire : **12/22/20**

Section/Block/Lot **004.-01-042.002**

Pursuant to application, and plans approved by the Building Inspector.  
Amount paid by holder of permit as required by Ordinance.

Description of Work: **MAINTAIN PLAY STRUCTURE IN REAR YARD**

Total Permit Fees:

  
\_\_\_\_\_  
Stephen R. Fellman

Per  \_\_\_\_\_

( This Permit may be Suspended or Terminated for any violation of the Ordinances of the VILLAGE OF BABYLON )

This permit must be kept on the premises until full completion of the work authorized.



No. 20-00098

Maintain  
Play  
House

# BUILDING PERMIT

VILLAGE OF BABYLON

## IMPORTANT

Tack This Card In A Conspicuous Place

**This Card Must Be Returned To BUILDING INSPECTOR On Final Inspection**

Building Inspector



[jyantz@villageofbabylonny.gov](mailto:jyantz@villageofbabylonny.gov)

---

**From:** [jyantz@villageofbabylonny.gov](mailto:jyantz@villageofbabylonny.gov)  
**Sent:** Wednesday, July 29, 2020 1:16 PM  
**To:** 'STEVIE RAY'  
**Subject:** INSPECTIONS WEDNESDAY, JULY 29TH

*Pls advise*

41 Oak Street, Keyway, [REDACTED] ✓

44 Roosevelt – Final Garage, [REDACTED] ✓

195 Livingston – Final pool, [REDACTED] ✓

63 Wyandanch – Play structure (call doorbell doesn't work) [REDACTED] ✓ 26-00098

179 Peninsula – Final inground pool/outdoor kitchen ✓

235 Litchfield Ave – Framing, [REDACTED] (call ½ hr prior) ✓

4 Argyle Ave – Insulation, [REDACTED] ✓

15 Edward (per Terry) ✓

155 Araca Rd – Motor home ✓ *SubHouse*

145 The Crescent – Construction without a permit?? !

\*\*3 pm meeting with Mayor

Regards,  
Jeanette Yantz  
Building Department  
Village of Babylon  
[jyantz@villageofbabylonny.gov](mailto:jyantz@villageofbabylonny.gov)



**VILLAGE OF BABYLON**  
**BABYLON, NEW YORK**  
**Telephone (631)-669-1300**

**Certificate of Occupancy No.** 20-00098

**Date:** 08/05/20

The Building Inspector of the Village of Babylon hereby certifies, that the following premises and buildings thereon, having reference to Building Permit Application No. 1494 conform to and comply with the provisions of the Building Zone Ordinance of the Village of Babylon.

**PREMISES:** 63 WYANDANCH AVE

**Section/Block/Lot:** 004.-01-042.002

**Description of Work** MAINTAIN PLAY STRUCTURE IN REAR YARD

This certificate is issued to REPETTO, GARY P  
address

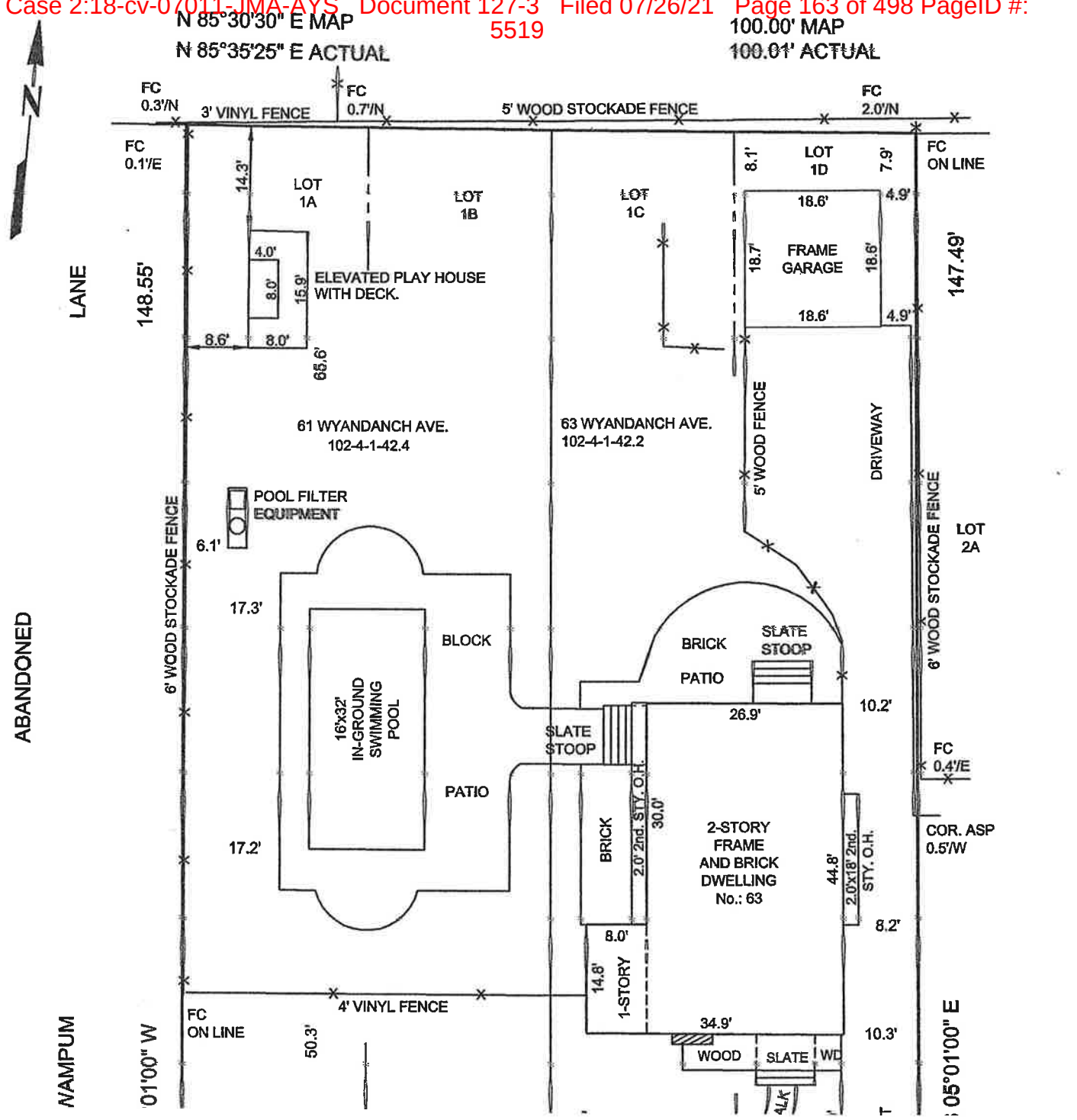
63 WYANDANCH AVENUE  
BABYLON NY 11702

of the aforesaid premises and buildings,

in accordance with the provisions of the Building Zone Ordinance of the Village of Babylon

  
\_\_\_\_\_  
Stephen R. Fellman  
Building Inspector







## Article VI: Enforcement; Permits; Site Plan Review

### § 365-25 Enforcement officer.

[Amended 3-27-2007 by L.L. No. 3-2007]

It shall be the duty of the Building Inspector or any Village of Babylon employee designated by the Building Inspector or the Mayor to enforce the provisions of this chapter.

### § 365-26 Permit required; materials to be submitted.

[Amended 12-11-1984 by L.L. No. 7-1984]

A. No building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector. The Building Inspector shall require that the application for a permit and the accompanying plot plan, plans and specifications shall contain all information necessary to enable him to determine whether the proposed building addition or structural alterations or change of use to an existing building comply with the provisions of this chapter and Chapter 171, Flood Damage Prevention, where applicable.

[Amended 10-24-2006 by L.L. No. 8-2006; 7-14-2015 by L.L. No. 5-2015]

B. No permit shall be required for a storage shed located on the same plot as a one- or two-family dwelling, provided that only one storage shed shall be located on such plot and that such storage shed shall be securely anchored to the ground, shall comply with the structural provisions of the New York State Uniform Fire Prevention and Building Code and shall comply with all other Village laws, rules and regulations. Any storage shed which, in the opinion of the Building Inspector, has become dangerous, unsound, unsafe or hazardous as a result of fire, neglect, disrepair, structural failure, collapse, vandalism or any other means shall be declared a public nuisance. Any such shed declared to be a public nuisance shall be removed in accordance with the Building Inspector's specifications.

C. Decks/patios; outdoor playgrounds and gyms.

[Added 9-9-1986 by L.L. No. 4-1986; amended 1-11-1994 by L.L. No. 1-1994]

(1) As used in this subsection, the following terms shall have the meanings indicated:

#### **DECK/PATIO**

A single- or multi-level open flat or roof-enclosed structure composed of wood, metal, masonry or similar material.

(2) Decks and patios over 18 inches in height shall conform to minimum setback requirements of the main structure. A building permit shall be required for a deck/patio which is 18 inches or more above the adjacent grade level.

(3) A building permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet.

D. In the districts designated in this Code as Marine Commercial District, Retail Business District and Industrial



District, no exterior additions, including but not limited to fences, decks, patios, breezeways, arbors, seating arrangements, freestanding walls and similar structures, shall be constructed, added, erected or placed upon any lot, plot or premises, and no excavation or work of any nature shall commence in connection therewith, until a permit authorizing the same shall have been issued by the Building Inspector. Before issuing such a permit, the Building Inspector shall require that an application for a permit shall be filed with accompanying plot plan, plans and specifications, and the same shall be referred to the Planning Board for recommendation in connection therewith. No building permit shall be issued except in conjunction with plans filed and approved.

[Added 5-10-1988 by L.L. No. 2-1988]

- E. A building permit shall be required for a roofless deck, patio, porch, landing, portico, balcony or sun deck which is more than 18 inches above the adjacent grade level or higher than the first floor grade of the main structure, whichever is lower. No work of any nature shall commence in connection therewith until a permit authorizing the same shall have been issued by the Building Inspector. Before issuing such a permit, the Building Inspector shall require that an application for a permit shall be filed with the occupancy plot plan and specifications, and the same shall be referred to the Planning Board for its review and recommendation. The Planning Board may approve with modifications or disapprove the same as it deems necessary to preserve the health, safety and welfare of the community. No building permit shall be issued except in conjunction with plans filed and approved.  
[Added 11-13-1990 by L.L. No. 4-1990; amended 6-23-1992 by L.L. No. 1-1992; 6-22-2004 by L.L. No. 2-2004]
- F. No outside stairway shall be installed to a deck, porch, landing, second or third floor, basement, portico, balcony or sun deck which has access to any part of a building that is higher or lower than the first floor.  
[Added 6-23-1992 by L.L. No. 1-1992; amended 11-25-1997 by L.L. No. 5-1997]
- G. Streamlining applications for rooftop solar panels.  
[Added 9-27-2011 by L.L. No. 2-2011]
- (1) Legislative purposes. The Village Board of Trustees has concluded that in order to facilitate adoption of solar energy technologies in residential settings, it is incumbent upon municipalities such as the Village of Babylon to remove the complexity and hassle associated with securing approval of installations for solar technology by creating a streamlined application process that is more targeted than the building permit process that is currently utilized. Such a new process will save time, eliminate paperwork and related expenses, protect public safety and speed approvals.
- (2) Definitions. As used in this section, the following terms shall have the meanings indicated:

**APPROVED CONTRACTOR**

A contractor whose credentials were reviewed and approved by either the Building Inspector or the Long Island Power Authority (LIPA) as evidenced by the list to be maintained and published by LIPA of installers whose credentials have been pre-screened.

**APPROVED EQUIPMENT**

Solar paneling equipment previously reviewed and approved by the Building Inspector or meeting the requirements for a standard installation and shall include the following:

- (a) Photovoltaic (PV) panels certified by a nationally-recognized testing laboratory as meeting the requirements of the Underwriters Laboratory (UL) Standard 1703;
- (b) Inverters on a list of New York State Public Service Commission type-tested Inverters which are tested by UL or other nationally-recognized laboratories to conform with UL standard 1741; and
- (c) Residential solar hot water (RSHW) equipment certified by the Solar Rating and Certification Corporation under its OG-100 standard for solar collectors.



**APPROVED INSPECTOR**

Electrical Underwriters, which are already required to perform the electrical inspection of the system, and who certify that they have been trained to perform the third-party PV inspection or a third-party designated by LIPA on a list of trained PV inspectors maintained by LIPA.

**SOLAR PANEL INSTALLATIONS**

Solar electric panel and solar hot water installations where the installation is to be flush mounted on a residential roof and to be installed by an approved contractor using approved equipment.

**STANDARD INSTALLATION**

A solar energy system with a roof load of no more than five pounds per square foot for photovoltaic (PV) and six pounds per square foot for residential solar hot water (RSHW) that is flush-mounted using a racking system approved by a licensed New York State professional engineer or registered architect on a residential roof with an eighteen-inch-wide clear path at the roof ridge.

- (3) Anything to the contrary notwithstanding, the Building Inspector shall expedite the process of permitting standard installations of solar panels by approved contractors using approved equipment. Permits for same may be issued based upon the following criteria:
  - (a) A new property survey shall not be required, but if the solar energy system is proposed for an accessory structure on the residential property, the property owner will be required to provide an existing survey showing that the accessory structure is legal.
  - (b) The application shall include a certified drawing (hand-drawn or better) of the solar panel location and layout on the roof and other diagrams.
  - (c) The application will require a professional engineer or registered architect to certify the load bearing and wind load sufficiency of the subject solar installation.
  - (d) The contractor must be an approved contractor.
  - (e) The permit shall be limited to approved equipment.
  - (f) The Building Inspector may rely upon and accept third-party inspections and/or certifications if provided by approved inspectors, which inspectors are to be paid for by the homeowner.
- (4) Requirements for permit submittal. Before approval and issuance of permit(s) for a grid-tied photovoltaic system (PV) or residential solar hot water system (RSHW), the applicant shall submit:
  - (a) A completed fast track permit requirements checklist on the Building Inspector's approved form.
  - (b) Three sets of plans which include:
    - [1] A cover sheet identifying the:
      - [a] Project address, map, section, block and lot number of the property;
      - [b] Owner's name, address, phone number; and
      - [c] Name, address and phone number of the person preparing the plans;
    - [2] Sheet index indicating each sheet title and number;





153 West Main Street  
Babylon Village, New York 11702  
(631) 669-1300 Fax (631) 669-1236  
www.villageofbabylonny.gov

## NOTICE OF VIOLATION

Name: John Lepper Lic. Plate No. \_\_\_\_\_  
Address: 59 Cockhorne Ave.  
Tel. No. \_\_\_\_\_ Sec. 4 Block 1 Lot(s) 100  
Place of Occurrence: 59 Cockhorne Ave

PLEASE TAKE NOTICE there exists a violation of

- ☒ Babylon Village Code Section 365-26  
☐ N.Y.S. Building Code Section \_\_\_\_\_  
☐ Multiple Residence Law \_\_\_\_\_  
☐ Other \_\_\_\_\_

at the premises described above in that Building permit required

Please be advised that the aforementioned violations must be corrected before the date of 3/23 2018, or an appearance ticket may be issued.

If you have any questions or we can assist you in any way, please contact us at the above number.

Code Enforcement Officer



Stephen R. Fellman  
Building Inspector  
Village of Babylon

Date: 5/1/2011



5/21/18

Look from Mr.

Lepper:

Told him probably  
need 2BA -

H 50 - 2BA

won't accept

hand drawings.



6/20/18 WM

Lepper  
59 Cochran-

Need plans per  
SKE &  
Bruce Humerich,  
2BA Chair.

See attached.

Never  
ple 7/1/18  
Summers



BRUCE WANTS  
SEALED PLANS  
FROM ENGINEER  
FOR TREEHOUSE



\* Notes Redacted

***Incorporated Village of Babylon***

153 W Main Street  
Babylon, NY 11702

**Board of Trustees Work Session  
August 14, 2018**

On the motion of Trustee Davida, seconded by Trustee Silvestri and unanimously carried, the meeting opened at 7:15 p.m.

Work Session:

1. Restaurant Moratorium
2. Parking Code
3. Nextel Lease

On the motion of Trustee Adams, seconded by Trustee Muldowney and unanimously carried, the public portion of the meeting adjourned at 7:23 p.m.

On the motion of Trustee Muldowney, seconded by Trustee Davida and unanimously carried, the Board entered into Executive Session at 7:29 p.m. to discuss sensitive properties.

Executive Session:

1. 89 Park Avenue
2. 72 Shore Rd.
3. 56 Yacht Club
4. 30 Tappan Ave.
5. Mayhew Dockings
6. Francesco's
7. 21 Lighthouse
8. 83 Sumpwams
9. Argyle, Bartini, Molto Vino, Barrique
10. 59 Cockonoe
11. 12 Tomkins
12. Bayview
13. 53 Melbury
14. 138 Shore

On the motion of Trustee Davida, seconded by Trustee Silvestri and unanimously carried, the meeting adjourned at 8:03 p.m.



***Incorporated Village of Babylon***  
153 W Main Street  
Babylon, NY 11702

\* Redacted  
notes

**Board of Trustees Work Session  
September 11, 2018**

On the motion of Trustee Davida, seconded by Trustee Silvestri and unanimously carried, the meeting opened at 7:05 p.m.

Work Session:

1. Restaurant Moratorium
2. Parking Code
3. Nextel Lease
4. Tres Palms
- 5.

On the motion of Trustee Silvestri, seconded by Trustee Muldowney and unanimously carried, the Board entered into Executive Session at 7:31 p.m. to discuss sensitive properties.

Executive Session:

1. 89 Park Avenue
2. 72 Shore Rd.
3. 306 Livingston
4. 30 Tappan Ave.
5. Mayhew Dockings
6. Francesco's
7. 21 Lighthouse
8. 83 Sumpwams
9. Middleton
10. 59 Cockonoe
11. 12 Tomkins
12. Rogers
13. 53 Melbury
14. 138 Shore

On the motion of Trustee Muldowney, seconded by Trustee Davida and unanimously carried the Board returned to public session at 8:07 p.m. and the meeting adjourned.



***Incorporated Village of Babylon***  
153 W Main Street  
Babylon, NY 11702

\* Redacted  
notes

**Board of Trustees Work Session**  
**October 2, 2018**

On the motion of Trustee Silvestri, seconded by Trustee Muldowney and unanimously carried, the meeting opened at 4:12 p.m.

Work Session:

1. Restaurant Moratorium
2. Sexual Harassment Policy
3. Sober House
4. Boat at #53 Melbury Road
5. Communications
6. Standing Water – East Shore Drive
7. American Tower – Cell Tower

Tony: - Pumps (Benson)  
- Marble Dusting/ Aqua Staining  
- Tree DPA

Kevin: - Computers (2)  
- Triangle (BBS)

Mary: - Tom Bruckner  
- 94 or 96 or 95

Robyn:- Building Permit for Mulberry  
- Building Inspection  
- Nelson / Pope  
- John O'Farrell  
- Bus. District

Meeting with Bruce

Gerard:  
- Syntex  
- Inspector – Scalvos  
- Tree House  
- Cell Tower

On the motion of Trustee Davida, seconded by Trustee Silvestri and unanimously carried the meeting adjourned at 5:55 p.m.



\* *Revised*  
*notes*

***Incorporated Village of Babylon***

153 W Main Street  
Babylon, NY 11702

**Board of Trustees Work Session  
October 9, 2018**

On the motion of Trustee Muldowney, seconded by Trustee Adams and unanimously carried, the meeting opened at 7:10 p.m.

On the motion of Trustee Muldowney, seconded by Trustee Adams and unanimously carried, the Board entered into Executive Session at 7:15 p.m. to discuss sensitive properties.

Executive Session:

1. 89 Park Avenue
2. 72 Shore Road
3. 306 Livingston
4. 30 Tappan
5. Francesco's
6. 21 Lighthouse
7. 83 Sumpwams
8. 59 Cockenoe
9. 12 Tompkins
10. 53 Melbury

On the motion of Trustee Davida, seconded by Trustee Muldowney and unanimously carried, the Executive Session ended at 7:40 p.m. and the Board returned to the Public session.

Work Session:

1. Restaurant Moratorium
2. Mayhew Dockings
3. Nextel Lease
4. Rogers

On the motion of Trustee Silvestri, seconded by Trustee Adams and unanimously carried, the meeting adjourned at 7:55 p.m.



***Incorporated Village of Babylon***

**153 W Main Street  
Babylon, NY 11702**

**Board of Trustees Work Session  
October 16, 2018**

On the motion of Trustee Davida, seconded by Trustee Silvestri and unanimously carried, the meeting opened at 4:43 p.m.

Gerard:

- Tree House
- Francesco's
- Rogers
- Babylon Court Yard

Tony: - Pumps for Pool  
- Sexual Harassment (Program)

Steve F:  
- Ketewamoke – 3<sup>rd</sup> house?  
- Wills House – brick/brack  
    Talk to Skip (DeSimone)  
- Argyle Falls (Savik & Murray)

Kevin: - Heinz – Shore Rd.  
- Luncheon for Golf

Steve F:  
- Roy's Property  
- Village Cup

Mary:  
- LEN Rd. House – not cleaning property  
- Sumpwam Place – Skip to do end of Str.  
- Trip – Melville to do mums  
- Thurs - Playground Cooper Street – Sometime

Robyn:  
- Containers – let things sit  
- Brunjes lawsuit  
- Shore East  
- Nextel lease  
- lights

On the motion of Trustee Muldowney, seconded by Trustee Adams and unanimously carried the meeting adjourned at 5:55 p.m.



\* Redacted  
notes

***Incorporated Village of Babylon***

153 W Main Street  
Babylon, NY 11702

**Board of Trustees Work Session  
October 23, 2018**

On the motion of Trustee Muldowney, seconded by Trustee Silvestri and unanimously carried, the meeting opened at 7:06 p.m.

Work Session:

1. Restaurant Moratorium
2. Mayhew Dockings
3. Nextel Lease: Island Towers
4. Rogers
5. Nicolia / Bus Terminal

On the motion of Trustee Muldowney, seconded by Trustee Silvestri and unanimously carried, the Board entered into Executive Session at 7:16 p.m. to discuss sensitive properties.

Executive Session:

1. 89 Park Avenue
2. 72 Shore Road
3. Francesco's
4. 83 Sumpwams
5. 59 Cockenoe
6. 12 Tompkins
7. 53 Melbury
8. Legal Aid Motions
9. 84 Fire Island Avenue

On the motion of Trustee Muldowney, seconded by Trustee Silvestri and unanimously carried, the Executive Session ended at 8:00 p.m.



***Incorporated Village of Babylon***

**153 W Main Street  
Babylon, NY 11702**

**Board of Trustees Work Session  
November 6, 2018**

On the motion of Trustee Davida, seconded by Trustee Muldowney and unanimously carried, the meeting opened at 4:35 p.m.

Gerard:

- What's Hot – What's Not
- 89 Park Ave. – Notification Out
- Tree House – Newsday called

Tony: - Nothing

Kevin:

- Spot Zone – (Railroad Revitalization Distr.)
- New Look for Courtyard
- \*Parking ?

Mary:

- Moratorium                      Marine District
- Tree Ordinance                Mayhew
- Pumpkins

Robyn:

- Tree House

Mayor:

- Railroad
- Kevin McCaffrey
- Questions for Coffee with the Mayor
- Janet Goltz (24 Paumanake Ave.)
- Von Bourgondien House, Peninsula

On the motion of Trustee Silvestri, seconded by Trustee Adams and unanimously carried the meeting adjourned at 5:55 p.m.



***Incorporated Village of Babylon***

**153 W Main Street  
Babylon, NY 11702**

**Board of Trustees Work Session  
November 20, 2018**

On the motion of Trustee Davida, seconded by Trustee Silvestri and unanimously carried, the meeting opened at 4:33 p.m.

- Church
  - Robyn - Lights
  - Tree House
  - Speed Limit (25 mph) Consultant
  - Montauk Highway
  - Railroad Station
  - Lockwood
  - Railroad zone;  
    parking & height
- 

- Tree House – in court
- Speed Limit – still discussing
- Montauk Highway – discussed
- Railroad Station – discussion
- Lockwood – Gerard to follow-up
- Railroad Zone – work in progress

On the motion of Trustee Davida, seconded by Trustee Muldowney and unanimously carried the meeting adjourned at 5:50 p.m.



***Incorporated Village of Babylon***

**153 W Main Street  
Babylon, NY 11702**

**Board of Trustees Work Session  
December 4, 2018**

On the motion of Trustee Davida, seconded by Trustee Muldowney and unanimously carried, the meeting opened at 4:37 p.m.

- Tony
- Kevin:
  - No boats in boat slips
  - Barriers too much
  - Golf course closes Sunday
  - Sexual harassment
- Mary:
  - House on Little East Neck Road
- Robyn:
  - Ralph Avenue
- Gerard
  - Slavos – nothing
  - Scharf – nothing
  - Tree House – in court
  - Legal Aid – filed all depositions (plead out)
  - Restaurant Moratorium – ongoing
  - Land Moratorium – next week
  - Rogers – get project going
  - Docking – January
  - Seqra – resolution
  - Sports Shack – looking into
  - Tree Program – Gerard would look at
  - Sexual Harassment – Andrew
  - Fines BOH – Gerard to look into
- Floating Zone\*
- Goltz
- Homestead Tax Option
- Beach House
- Day Care
- Towers
- Cablevision – new cable

On the motion of Trustee Muldowney, seconded by Trustee Adams and unanimously carried the meeting adjourned at 5:40 p.m.



OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

August 14, 2018

Mr. John Lepper  
59 Cockonoe Avenue  
Babylon, NY 11702

Re: 59 Cockonoe Avenue, Babylon, NY

Dear Mr. Lepper,

Per Section 116 Unsafe Structures of the International Building Code the treehouse at the above referenced premises is hereby deemed an unsafe structure and may not be occupied until such time a Certificate of Occupancy is issued.

Respectfully,

A handwritten signature in black ink, appearing to be 'SF', is written over the word 'Respectfully,'.

Stephen Fellman  
Building Inspector



*Gerard Glass & Associates P.C.*  
ATTORNEYS AT LAW

72 East Main Street, Suite 3  
Babylon, NY 11702  
Telephone (631) 321-1400  
Facsimile (631) 321-1491

GERARD GLASS, ESQ.  
[gg@gglasslaw.com](mailto:gg@gglasslaw.com)

SUPPORT STAFF  
STACIE A. BALTRUSITIS  
[sb@gglasslaw.com](mailto:sb@gglasslaw.com)

MAUREEN IMPAGLIAZZO  
[mi@gglasslaw.com](mailto:mi@gglasslaw.com)

October 18, 2018

Mr. John Lepper  
59 Cockonoe Avenue  
Babylon, New York 11702

RE: 59 Cockonoe

Dear Mr. and Mrs. Lepper:

As you know this office is counsel to the Village of Babylon.

The Court has rendered its decision. Please let me know your intentions.

Thank you for your attention and courtesies herein.

Very truly yours,

*Gerard Glass* (mi)

GERARD GLASS

GG:mi  
Enclosures  
cc: Suzanne Schettino  
Debbie Longo



OFFICE OF THE  
BUILDING INSPECTOR

Stephen Fellman  
Building Inspector



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

October 19, 2018

Mr. John Lepper  
59 Cockonoe Avenue  
Babylon, NY 11702

Re: ORDER OF REMOVAL

Dear Mr. Lepper:

On October 27, 2018 Village Justice John Rafter found you guilty of each offense listed on various summonses you received regarding the construction of a treehouse within your front yard setback.

I, as Building Inspector, am ordering the continuation of the stop work order barring any further construction or occupancy of the tree house.

You must remove the tree house in its entirety or summonses may be issued on a daily basis.

If you have any question please do not hesitate to contact me at 631-987-3065.

Respectfully Submitted;

A handwritten signature in black ink, appearing to be 'SF', is written over a horizontal line.

Stephen Fellman  
Building Inspector

Cc: Mayor Ralph Scordino  
Board of Trustees  
Gerard Glass, Village Attorney



**APPELLATE TERM OF THE SUPREME COURT  
OF THE STATE OF NEW YORK FOR THE 9TH & 10TH JUDICIAL DISTRICTS**

Argued - October 10, 2019 Term

THOMAS A. ADAMS, P.J.  
BRUCE E. TOLBERT  
JERRY GARGUILO, JJ.

-----X

**DECISION & ORDER**

The People of the State of New York, Respondent, v  
John Lepper, Appellant.

Appellate Term Docket No.  
2018-2466 S CR

Lower Court # 494213, 494214, 494215, 294222  
-----X

Law Office of Cory H. Morris (Cory H. Morris of counsel), for appellant.

Gerard Glass and Associates, P. C. (Gerard Glass of counsel), for respondent.

Appeal from four judgments of the Justice Court of the Village of Babylon, Suffolk County (John T. Rafter, J.), rendered October 17, 2018. The four judgments convicted defendant, after a nonjury trial, of four charges of violating Babylon Village Code § 365-26, respectively, and imposed sentences.

ORDERED that the judgments of conviction are reversed, on the law, the informations are dismissed and the fines, if paid, are remitted.

In each of four purported informations, defendant was charged with violating Babylon Village Code (Code) § 365-26. At a nonjury trial, the People presented proof that defendant had constructed a tree house without a permit at a residential premises where he resided. Following the trial, defendant was convicted as charged. On appeal, defendant contends, among other things, that the accusatory instruments are facially insufficient. We agree.

A violation under a zoning ordinance “necessarily presupposes a criminal action” (*see Matter of Shirley v Schulman*, 78 NY2d 915, 916 [1991]), which must be commenced by the filing of a valid and sufficient accusatory instrument in order for the court to obtain jurisdiction (*see* CPL 100.05; *People v Jackson*, 18 NY3d 738, 741 [2012]; *Matter of Shirley v Schulman*, 78 NY2d at 916-917). As the record does not reveal that defendant waived prosecution by information (*see People v Dumay*, 23 NY3d 518, 522 [2014]), the standards of review of the sufficiency of the instruments are those applicable to informations (*see* CPL 100.40 [1], 170.65 [1], [3]; *People v Jackson*, 18 NY3d at 741; *see also People v Kalin*, 12 NY3d 225, 228 [2009]). An information is sufficient on its face



if it contains nonhearsay factual allegations of an evidentiary nature which establish, if true, every element of the offense charged and the defendant's commission thereof (*see* CPL 100.15 [3]; 100.40 [1]; *People v Henderson*, 92 NY2d 677, 679 [1999]; *People v Alejandro*, 70 NY2d 133, 136-137 [1987]).

Code § 365-26 provides that “[n]o building shall hereafter be erected and no existing building shall be structurally altered or added to on any lot, plot or premises and no excavation or work of any nature shall commence in connection therewith, nor shall any use of an existing building be changed until a permit authorizing the same shall have been issued by the Building Inspector.” Section 365-3 of the Code defines a “building” as “[a] structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels.” The factual portions of the accusatory instruments—containing only a few words, “WITHOUT A PERMIT – TREEHOUSE”—fail to allege facts establishing that the tree house constituted a “building” within the meaning of the statute, thereby triggering the permit requirement. The accusatory instruments also fail to allege facts of an evidentiary nature establishing the nature of the work that defendant performed on the tree house, namely, that defendant had erected the tree house, structurally altered it or changed the use thereof (*see People v Hernandez*, 64 Misc 3d 145[A], 2019 NY Slip Op 51303[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2019]; *People v James*, 49 Misc 3d 154[A], 2015 NY Slip Op 51791[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2015]). Therefore, the accusatory instruments fail to allege every element of the offense (*see People v Taffet*, 54 Misc 3d 21, 24-25 [App Term, 2d Dept, 9th & 10th Jud Dists 2016]; *People v James*, 49 Misc 3d 154[A], 2015 NY Slip Op 51791[U]; *People v Roslyn Sephardic Ctr.*, 17 Misc 3d 74, 76-77 [App Term, 2d Dept, 9th & 10th Jud Dists 2007]).

In view of the foregoing, we pass upon no other issue raised on appeal.

Accordingly, the judgments of conviction are reversed and the informations are dismissed.

ADAMS, P.J., TOLBERT and GARGUILO, JJ., concur.

ENTER:

  
Paul Kenny  
Chief Clerk



**A Letter from the Mayor about Treehouses and Other Things...**

From time to time I have used this page to comment on matters of interest here in the Village. Today, I'm writing about something you may have heard about or read about in the news – a treehouse a Village resident decided to erect in his yard. At first blush this may seem like no big deal. Why should the Village care to interfere with a homeowner's right to build his kids a treehouse in his own yard? Well, that's what I thought at first too.

To begin with, this all started with complaints to my office from the homeowner's own neighbors. They complained this was no ordinary treehouse tucked away in someone's backyard. They explained it was nearly 100 square feet. The treehouse had sidewalls, a pitched roof and electric, and that the homeowner built the treehouse nearly on the property line along a residential street.

I referred the neighbors' complaints to our Building Inspector who, by the way, is also a licensed architect. He advised me that pursuant to State law and the Village Code the homeowner would need to obtain a building permit. This means he would have to submit plans to assure the treehouse was properly built and show the treehouse complied with local zoning.

The Building Inspector commented to me our laws in the Village are no different than anywhere else. Structures like this treehouse require a building permit to make sure they are safe, not a fire hazard and that they don't unfairly impact the privacy and other rights of the homeowner's neighbors. This seemed reasonable to me.

In any event, the problem snowballed because the homeowner refused to comply and go through the process to legalize the structure. Summonses were issued. The homeowner decided rather than apply for a permit he would challenge the summonses in court. He demanded a trial. Well, after having a fair opportunity to be heard, the homeowner lost. The Court told the homeowner he had to follow the same rules as everyone else. Instead, the homeowner went to the media to pressure the Village to change its position. To date, the homeowner has not applied to legalize the treehouse.

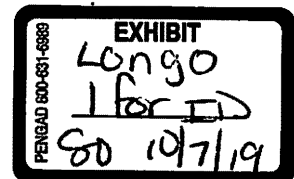
I've read that people say this is all about taxes – it's not. Someone could get hurt. Then, you guessed it, the Village could get sued and you, the taxpayers, would pay. I want you to know for the Village reasonable compliance with the law is not an option. We are legally and morally obligated to treat everyone the same.

The homeowner chose to build this treehouse without getting the proper permit. It is now up to him to try to make it right.

Best wishes for the Holiday Season.

Cordially,

Mayor Ralph Scordino





Effective 2/2018

OFFICE OF CONGRESSMAN PETER T. KING  
PRIVACY RELEASE FORM

Pursuant to the provisions of the Federal Privacy Act, I hereby authorize Congressman Peter T. King to contact (federal agency) Babylon Village on my behalf and receive information and/or reports pertaining thereto.

NAME: John Lepper

Date of Birth: 10/24/2018

Current Mailing Address (no P.O. Boxes):

59 Cockrope Ave  
Babylon NY 11702

Email: Lep73@gmail.com

Telephone Numbers: (Home) (631) 539-9713 (Other) Cell (631) 766-1181

List any identifying numbers that might apply to your situation:

Social Security Number / Service Number / Immigration "A" Number: \_\_\_\_\_

Briefly describe your problem:

Dear Congressman King,

I apologize for asking for your help during your Campaign for reelection; however this is a very important Matter for myself and my family. I feel as though we were Not treated fairly by the elected officials of Babylon Village. I built a treehouse for my kids back in May and was Met with a lot of resistance. I've done everything that was asked of me by the bldg inspector. Then we recieved three violations for three separate days in the same envelope. Desired outcome: Not allowing us any time to respond to any of the violations that were being accused of, "Bldg Code" 365-26

I hereby declare that I am currently a resident of the Second Congressional District. I certify, under penalty of perjury, that 1) I provided or authorized all of the information in this privacy release and any document submitted with it; 2) I reviewed and



Effective 2/2018

OFFICE OF CONGRESSMAN PETER T. KING  
PRIVACY RELEASE FORM

Pursuant to the provisions of the Federal Privacy Act, I hereby authorize Congressman Peter T. King to contact (federal agency) \_\_\_\_\_ on my behalf and receive information and/or reports pertaining thereto.

NAME: \_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

Current Mailing Address (no P.O. Boxes):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Telephone Numbers: (Home) \_\_\_\_\_ (Other) \_\_\_\_\_

List any identifying numbers that might apply to your situation:

Social Security Number / Service Number / Immigration "A" Number: \_\_\_\_\_

Briefly describe your problem:

Desired outcome: Possibly speak to Mayor Scordino to see if he might be willing to overturn the decision to dismantle our treehouse. As we are clearly not in violation of bldg code 365-26. "A bldg permit shall be required when an outdoor playground or gym (or any combination) exceeds a lot area of 90 square feet."

I hereby declare that I am currently a resident of the Second Congressional District. I certify, under penalty of perjury, that 1) I provided or authorized all of the information in this privacy release and any document submitted with it; 2) I reviewed and

Cockonoe Treehouse 86 sq ft



Date: 10/24/2018

P.S. Would just like to add that, I spent my first 30yrs of life in N, Massapequa. I'm a Veteran, a Member of the FDNY and have been a professional contractor for over 20yrs. I would also like to add that you have had and always will have the support of the Lepper family.

Sincerely



BAF ON VILLAGE COURT APPEARANCE TICKET  
153 W. MAIN ST., BABYLON, N. Y. 11702  
Phone: (631) 669-1771  
**494213**

**TO ENTER A PLEA BY MAIL USE REVERSE SIDE.**

Pay online @www.babylonparking.com or call 1 (855) 831-4968

THE PEOPLE OF THE STATE OF NEW YORK (Village of Babylon vs.)

NAME <b>JOHN LEPPER</b>		D.O.B.	
ADDRESS <b>59 COCKENOE AVE</b>			
VIN# <b>BABYLON N.Y.</b>		<input type="checkbox"/> PHOTO <input type="checkbox"/> ON COMPLAINT	
PLATE	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
STATE	<input type="checkbox"/> N.Y. <input type="checkbox"/> FL. <input type="checkbox"/> PA. <input type="checkbox"/> N.J. <input type="checkbox"/> Other	PLATE	<input type="checkbox"/> Pass. <input type="checkbox"/> Boat <input type="checkbox"/> Comm. <input type="checkbox"/> Trail <input type="checkbox"/> Other (Specify Type)
TYPE	<input type="checkbox"/> SEDAN <input type="checkbox"/> VAN <input type="checkbox"/> PICKUP <input type="checkbox"/> CONV <input type="checkbox"/> SUBN <input type="checkbox"/> Other	COLOR	YEAR
MAKE	<input type="checkbox"/> CHEV <input type="checkbox"/> FORD <input type="checkbox"/> HYUN <input type="checkbox"/> DODG <input type="checkbox"/> JEEP <input type="checkbox"/> MAZDA <input type="checkbox"/> HONDA <input type="checkbox"/> NISSAN <input type="checkbox"/> TOYT <input type="checkbox"/> Other	REG. EXPIRE	

**THE ABOVE DEFENDANT IS CHARGED AS FOLLOWS**

Date of Offense <b>7/11/18</b>	Time <b>3:00</b>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Place of Occurrence <b>59 COCKENOE AVE</b>		Babylon, New York
SPECIFIC SECTION: <b>SECTION 205.26 - CONSTRUCTION</b>		<input type="checkbox"/> VILLAGE CODE <input type="checkbox"/> V&T LAWS OF N.Y.S.

Violation	Original Fine	Fine After 30 days	Fine After 60 days	Fine After 90 days
<input type="checkbox"/>	\$25.00	\$50.00	\$100.00	\$250.00
<input type="checkbox"/>	\$35.00	\$70.00	\$140.00	\$250.00
<input type="checkbox"/>	\$50.00	\$100.00	\$250.00	\$500.00
<input type="checkbox"/>	\$75.00	\$150.00	\$250.00	\$500.00
<input type="checkbox"/>	\$100.00	\$200.00	\$300.00	\$500.00
<input type="checkbox"/>	\$125.00	\$250.00	\$300.00	\$500.00
<input type="checkbox"/>	\$150.00	\$300.00	\$400.00	\$500.00
<input type="checkbox"/>	CONTACT COURT			

YOU ARE HEREBY NOTIFIED TO ANSWER THIS TICKET IN PERSON OR BY MAIL TO THE VILLAGE JUSTICE COURT BY THE FOLLOWING APPEARANCE DATE.

APPEARANCE DATE → **8/14/18** ☒ 2 PM ☐ 7 PM

NOTICE  
I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW AFFIRMED UNDER PENALTY OF PERJURY THIS **18th** DAY OF **JULY** 2018 **BLK**

COMPLAINANT'S SIGNATURE **STEPHEN FELLMAN** SH # **INS1**

BAP ON VILLAGE COURT APPEARANCE TICKET  
153 W. MAIN ST., BABYLON, N. Y. 11702  
Phone: (631) 669-1771  
**494214**

**TO ENTER A PLEA BY MAIL USE REVERSE SIDE.**

Pay online @www.babylonparking.com or call 1 (855) 831-4968

THE PEOPLE OF THE STATE OF NEW YORK (Village of Babylon vs.)

NAME <b>JOHN LEPPER</b>		D.O.B.	
ADDRESS <b>59 COCKENOE AVE</b>			
VIN# <b>BABYLON N.Y.</b>		<input type="checkbox"/> PHOTO <input type="checkbox"/> ON COMPLAINT	
PLATE	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
STATE	<input type="checkbox"/> N.Y. <input type="checkbox"/> FL. <input type="checkbox"/> PA. <input type="checkbox"/> N.J. <input type="checkbox"/> Other	PLATE	<input type="checkbox"/> Pass. <input type="checkbox"/> Boat <input type="checkbox"/> Comm. <input type="checkbox"/> Trail <input type="checkbox"/> Other (Specify Type)
TYPE	<input type="checkbox"/> SEDAN <input type="checkbox"/> VAN <input type="checkbox"/> PICKUP <input type="checkbox"/> CONV <input type="checkbox"/> SUBN <input type="checkbox"/> Other	COLOR	YEAR
MAKE	<input type="checkbox"/> CHEV <input type="checkbox"/> FORD <input type="checkbox"/> HYUN <input type="checkbox"/> DODG <input type="checkbox"/> JEEP <input type="checkbox"/> MAZDA <input type="checkbox"/> HONDA <input type="checkbox"/> NISSAN <input type="checkbox"/> TOYT <input type="checkbox"/> Other	REG. EXPIRE	

**THE ABOVE DEFENDANT IS CHARGED AS FOLLOWS**

Date of Offense <b>7/12/18</b>	Time <b>3:00</b>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Place of Occurrence <b>59 COCKENOE AVE</b>		Babylon, New York
SPECIFIC SECTION: <b>SECTION 205.26 - CONSTRUCTION</b>		<input type="checkbox"/> VILLAGE CODE <input type="checkbox"/> V&T LAWS OF N.Y.S.

Violation	Original Fine	Fine After 30 days	Fine After 60 days	Fine After 90 days
<input type="checkbox"/>	\$25.00	\$50.00	\$100.00	\$250.00
<input type="checkbox"/>	\$35.00	\$70.00	\$140.00	\$250.00
<input type="checkbox"/>	\$50.00	\$100.00	\$250.00	\$500.00
<input type="checkbox"/>	\$75.00	\$150.00	\$250.00	\$500.00
<input type="checkbox"/>	\$100.00	\$200.00	\$300.00	\$500.00
<input type="checkbox"/>	\$125.00	\$250.00	\$300.00	\$500.00
<input type="checkbox"/>	\$150.00	\$300.00	\$400.00	\$500.00
<input type="checkbox"/>	CONTACT COURT			

YOU ARE HEREBY NOTIFIED TO ANSWER THIS TICKET IN PERSON OR BY MAIL TO THE VILLAGE JUSTICE COURT BY THE FOLLOWING APPEARANCE DATE.

APPEARANCE DATE → **8/14/18** ☒ 2 PM ☐ 7 PM

NOTICE  
I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW AFFIRMED UNDER PENALTY OF PERJURY THIS **18th** DAY OF **JULY** 2018 **BLK**

COMPLAINANT'S SIGNATURE **STEPHEN FELLMAN** SH # **INS1**



BAF ON VILLAGE COURT  
153 W. MAIN ST., BABYLON, N. Y. 11702  
Phone: (631) 669-1771

APPEARAL TICKET  
494215

TO ENTER A PLEA BY MAIL USE REVERSE SIDE.

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THE PEOPLE OF THE STATE OF NEW YORK (Village of Babylon vs.)

NAME <b>JOHN LEPPER</b>		D.O.B.	
ADDRESS <b>59 COCKENOE AVE</b>			
VILLAGE <b>BABYLON N.Y.</b>		<input type="checkbox"/> PHOTO <input type="checkbox"/> ON COMPLAINT	
PLATE <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
STATE	<input type="checkbox"/> N.Y. <input type="checkbox"/> FL. <input type="checkbox"/> PA. <input type="checkbox"/> N.J. <input type="checkbox"/> Other	PLATE TYPE <input type="checkbox"/> Pass. <input type="checkbox"/> Boat <input type="checkbox"/> Comm. <input type="checkbox"/> Trail <input type="checkbox"/> Other (Specify Type)	
VEHICLE TYPE	<input type="checkbox"/> SEDAN <input type="checkbox"/> VAN <input type="checkbox"/> PICKUP <input type="checkbox"/> CONV. <input type="checkbox"/> SUBV. <input type="checkbox"/> Other	COLOR	YEAR
MAKE	<input type="checkbox"/> CHEV. <input type="checkbox"/> FORD <input type="checkbox"/> HYUN. <input type="checkbox"/> DODG. <input type="checkbox"/> JEEP <input type="checkbox"/> MAZDA <input type="checkbox"/> HONDA <input type="checkbox"/> NISSAN <input type="checkbox"/> TOYT. <input type="checkbox"/> Other	REG. EXPIRE	

THE ABOVE DEFENDANT IS CHARGED AS FOLLOWS

Date of Offense <b>7/13/18</b>	Time <b>3<sup>00</sup></b>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Place of Occurrence <b>59 COCKENOE AVE</b>		Babylon, New York
SPECIFIC SECTION: <b>265.00 - CONSTRUCTION WITHOUT A PERMIT - THE HOUSE</b>		<input type="checkbox"/> VILLAGE CODE <input checked="" type="checkbox"/> V&T LAWS OF N.Y.S.

Violation	Original Fine	Fine After 30 days	Fine After 60 days	Fine After 90 days
<input type="checkbox"/>	\$25.00	\$50.00	\$100.00	\$250.00
<input type="checkbox"/>	\$35.00	\$70.00	\$140.00	\$250.00
<input type="checkbox"/>	\$50.00	\$100.00	\$250.00	\$500.00
<input type="checkbox"/>	\$75.00	\$150.00	\$250.00	\$500.00
<input type="checkbox"/>	\$100.00	\$200.00	\$300.00	\$500.00
<input type="checkbox"/>	\$125.00	\$250.00	\$300.00	\$500.00
<input type="checkbox"/>	\$150.00	\$300.00	\$400.00	\$500.00
<input type="checkbox"/>	CONTACT COURT			

YOU ARE HEREBY NOTIFIED TO ANSWER THIS TICKET IN PERSON OR BY MAIL TO THE VILLAGE JUSTICE COURT BY THE FOLLOWING APPEARANCE DATE.

APPEARANCE DATE → **8/14/18** ☒ 2 PM ☐ 7 PM

NOTICE  
I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW AFFIRMED UNDER PENALTY OF PERJURY THIS **18** DAY OF **JULY** 20 **18** BY **BLANK**

COMPLAINANT'S SIGNATURE **STEPHEN FELLMAN** SH # **1151**



PETER T. KING  
Member of Congress  
Second District, New York

339 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3202  
(202) 225-7896

1003 PARK BOULEVARD  
MASSAPEQUA PARK, NY 11762  
(516) 541-4225  
(631) 541-4225

[pete.king@mail.house.gov](mailto:pete.king@mail.house.gov)  
[www.peteking.house.gov](http://www.peteking.house.gov)  
Twitter: @RepPeteKing



Congress of the United States  
House of Representatives  
Washington, DC 20515-3202

October 24, 2018

COMMITTEE ON HOMELAND SECURITY

CHAIRMAN, SUBCOMMITTEE ON  
COUNTERTERRORISM AND INTELLIGENCE

PERMANENT SELECT COMMITTEE  
ON INTELLIGENCE

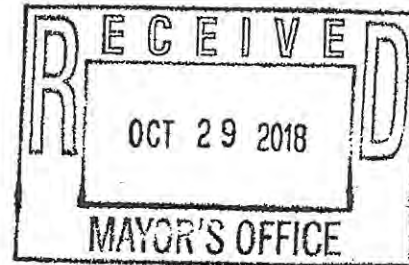
CHAIRMAN, SUBCOMMITTEE ON EMERGING THREATS

FINANCIAL SERVICES COMMITTEE

SUBCOMMITTEE ON  
CAPITAL MARKETS, SECURITIES & INVESTMENTS

SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS

Mayor Ralph Scordino  
Village of Babylon  
153 West Main Street  
Babylon, New York 11702



**RE: John Lepper Tree House Permit Issue.**

Dear Mayor Scordino,

The attached communication is sent for your consideration. Please investigate the statements contained therein and respond to me with the necessary information for reply, returning the enclosed correspondence with your answer.

**Send all correspondence to my Massapequa Park District Office at 1003 Park Blvd., Massapequa Park, New York 11762.**

Thank you for your prompt attention to this matter.

Sincerely,

PETER T. KING  
Member of Congress

PTK/kd

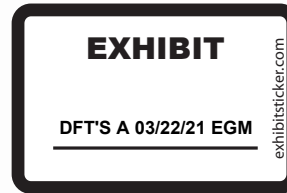


RECEIVED

MAR 12 2021

KELLY, RODE & KELLY, LLP

**John Lepper**  
59 Cockenoe Ave  
Babylon, New York 11704



Re: Treehouse

Dear John:

Per the request and direction of Judge Bianco I am providing certification as follows:

Based on my structural inspection of the treehouse structure in its current form, I find that the treehouse structure supported in the tree is structurally stable and meets code loadings for wind, snow and LL as prescribed by IBC and local requirements. In other words the structure is able to withstand all weather-related events that are in accordance with code-induced loading criteria.

James R Brown, PE  
NY Professional Engineer - 063146



Seal/Signature



Title Block Line 1

You can change this area  
using the "Settings" menu item  
and then using the "Printing &  
Title Block" selection.

Title Block Line 6

Project Title: Sample Project Title

Engineer:

Project ID: X1A

Project Descr: Sample Project Description

Printed: 9 MAR 2021, 12:05PM

File: RACK.ec6

Software copyright ENERCALC, INC. 1983-2020, Build:12.20.8.24

Brown and Associates

**Wood Beam**

Lic. #: KW-06013309

**DESCRIPTION:** TREEHOUSE FLOOR**CODE REFERENCES**

Calculations per NDS 2012, IBC 2012, CBC 2013, ASCE 7-10

Load Combination Set : IBC 2012

**Material Properties**

Analysis Method : Load Resistance Factor D  
Load Combination IBC 2012

Wood Species : DF/DF  
Wood Grade : 24F - V4

Beam Bracing : Beam bracing is defined as a set spacing over all spans

Fb + 2,400.0 psi  
Fb - 1,850.0 psi  
Fc - Prll 1,650.0 psi  
Fc - Perp 650.0 psi  
Fv 265.0 psi  
Fi 1,100.0 psi

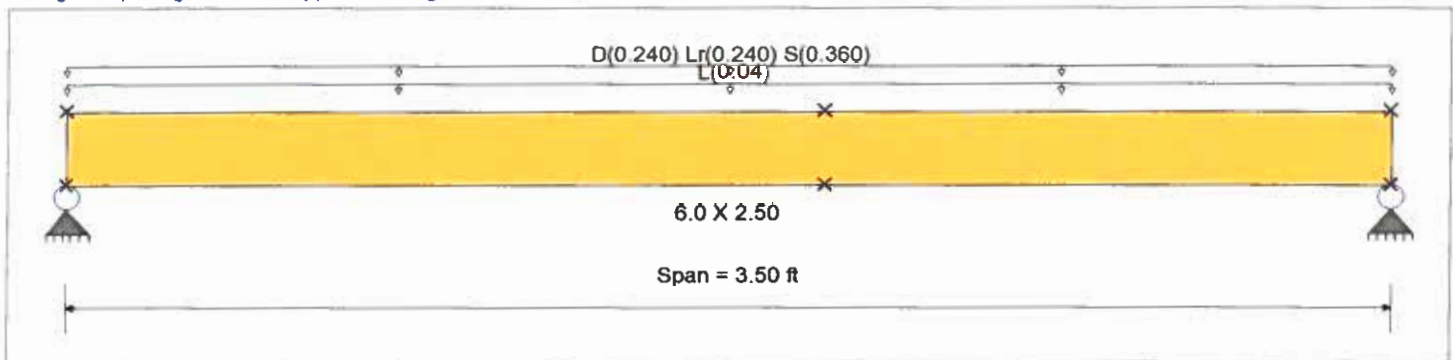
E : Modulus of Elasticity

Ebend-xx 1,800.0 ksi  
Eminbend-xx 930.0 ksi  
Ebend-yy 1,600.0 ksi  
Eminbend-yy 830.0 ksi  
Density 31.20 pcf  
Repetitive Member Stress Increase

**Unbraced Lengths**

First Brace starts at 2.0 ft from Left-Most support

Regular spacing of lateral supports on length of beam = 2.0 ft

**Applied Loads**

Service loads entered. Load Factors will be applied for calculations.

Beam self weight calculated and added to loads

Loads on all spans...

Uniform Load on ALL spans : D = 0.020, Lr = 0.020, S = 0.030 ksf, Tributary Width = 12.0 ft

Uniform Load : L = 0.040, Tributary Width = 1.0 ft

**DESIGN SUMMARY**

Design OK

Maximum Bending Stress Ratio	=	0.630 : 1	Maximum Shear Stress Ratio	=	0.300 : 1
Section used for this span	=	6.0 X 2.50	Section used for this span	=	6.0 X 2.50
fb: Actual	=	2,610.43 psi	fv: Actual	=	137.24 psi
Fb: Allowable	=	4,145.28 psi	Fv: Allowable	=	457.92 psi
Load Combination	=	+1.20D+0.50L+1.60S	Load Combination	=	+1.20D+0.50L+1.60S
Location of maximum on span	=	1.750 ft	Location of maximum on span	=	3.296 ft
Span # where maximum occurs	=	Span # 1	Span # where maximum occurs	=	Span # 1
Maximum Deflection					
Max Downward Transient Deflection		0.087 in Ratio = 483 >= 360			
Max Upward Transient Deflection		0.000 in Ratio = 0 < 360			
Max Downward Total Deflection		0.146 in Ratio = 288 >= 240			
Max Upward Total Deflection		0.000 in Ratio = 0 < 240			

**Maximum Forces & Stresses for Load Combinations**

Load Combination	Segment Length	Span #	Max Stress Ratios			Moment Values							Shear Values				
			M	V	$\lambda$	$C_{FN}$	$C_i$	$C_r$	$C_m$	$C_t$	$C_L$	$M_u$	$f_b$	$F_b$	$V_u$	$f_v$	$F_v$
+1.40D														0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.322	0.153	0.60	1.000	1.00	1.00	1.00	1.00	1.00	0.52	1,001.22	3108.96	0.53	52.64	343.44
Length = 1.507 ft	1		0.316	0.153	0.60	1.000	1.00	1.00	1.00	1.00	1.00	0.51	981.96	3108.96	0.53	52.64	343.44
+1.20D+0.50Lr+1.60L						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.338	0.161	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.73	1,399.15	4145.28	0.74	73.56	457.92
Length = 1.507 ft	1		0.331	0.161	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.71	1,372.24	4145.28	0.74	73.56	457.92
+1.20D+1.60L+0.50S						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.380	0.181	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.82	1,575.55	4145.28	0.83	82.83	457.92



Title Block Line 1

You can change this area  
using the "Settings" menu item  
and then using the "Printing &  
Title Block" selection.

Title Block Line 6

Project Title: Sample Project Title

Engineer:

Project ID: X1A

Project Descr: Sample Project Description

Printed 9 MAR 2021 12:05PM

**Wood Beam**

File: RACK.ec6

Lic. #: KW-06013309

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Brown and Associates

**DESCRIPTION: TREEHOUSE FLOOR**

Load Combination	Segment Length	Span #	Max Stress Ratios		$\lambda$	$C_{FN}$	$C_i$	$C_r$	$C_m$	$C_t$	$C_L$	Moment Values			Shear Values		
			M	V								Mu	fb	Fb	Vu	fv	Fv
Length = 1.507 ft	1		0.373	0.181	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.80	1,545.24	4145.28	0.83	82.83	457.92
+1.20D+1.60Lr+0.50L						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.494	0.235	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.07	2,045.95	4145.28	1.08	107.56	457.92
Length = 1.507 ft	1		0.484	0.235	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.05	2,006.59	4145.28	1.08	107.56	457.92
+1.20D+1.60Lr						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.479	0.228	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.03	1,987.15	4145.28	1.04	104.47	457.92
Length = 1.507 ft	1		0.470	0.228	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.02	1,948.93	4145.28	1.04	104.47	457.92
+1.20D+0.50L+1.60S						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.630	0.300	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.36	2,610.43	4145.28	1.37	137.24	457.92
Length = 1.507 ft	1		0.618	0.300	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.33	2,560.22	4145.28	1.37	137.24	457.92
+1.20D+1.60S						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.616	0.293	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.33	2,551.63	4145.28	1.34	134.14	457.92
Length = 1.507 ft	1		0.604	0.293	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.30	2,502.55	4145.28	1.34	134.14	457.92
+1.20D+0.50Lr+0.50L						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.245	0.117	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.66	1,269.79	5181.60	0.67	66.76	572.40
Length = 1.507 ft	1		0.240	0.117	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.65	1,245.36	5181.60	0.67	66.76	572.40
+1.20D+0.50L+0.50S						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.279	0.133	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.75	1,446.19	5181.60	0.76	76.03	572.40
Length = 1.507 ft	1		0.274	0.133	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.74	1,418.37	5181.60	0.76	76.03	572.40
+1.20D+0.50L+0.70S						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.320	0.152	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.86	1,657.87	5181.60	0.87	87.16	572.40
Length = 1.507 ft	1		0.314	0.152	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.85	1,625.98	5181.60	0.87	87.16	572.40
+0.90D						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.124	0.059	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.34	643.64	5181.60	0.34	33.84	572.40
Length = 1.507 ft	1		0.122	0.059	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.33	631.26	5181.60	0.34	33.84	572.40

**Overall Maximum Deflections**

Load Combination	Span	Max. "+" Defl	Location in Span	Load Combination	Max. "+" Defl	Location in Span
+D+S	1	0.1457	1.763		0.0000	0.000

**Vertical Reactions**

Support notation : Far left is #1

Values in KIPS

Load Combination	Support 1	Support 2
Overall MAXimum	1.056	1.056
Overall MINimum	0.630	0.630
D Only	0.426	0.426
+D+L	0.496	0.496
+D+Lr	0.846	0.846
+D+S	1.056	1.056
+D+0.750Lr+0.750L	0.793	0.793
+D+0.750L+0.750S	0.951	0.951
+0.60D	0.255	0.255
Lr Only	0.420	0.420
L Only	0.070	0.070
S Only	0.630	0.630



Title Block Line 1

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Title Block Line 6

Project Title: Sample Project Title

Engineer:

Project ID: X1A

Project Descr: Sample Project Description

Printed: 9 MAR 2021 12:05PM

**Wood Beam**

Lic. #: KW-06013309

File: RACK.ec6

Software copyright ENERCALC, INC. 1983-2020, Build:12.20.8.24

Brown and Associates

**DESCRIPTION:** TREEHOUSE FLOOR**CODE REFERENCES**

Calculations per NDS 2012, IBC 2012, CBC 2013, ASCE 7-10

Load Combination Set : IBC 2012

**Material Properties**

Analysis Method : Load Resistance Factor D  
Load Combination IBC 2012

Wood Species : DF/DF  
Wood Grade : 24F - V4

Beam Bracing : Beam bracing is defined as a set spacing over all spans

Fb + 2,400.0 psi  
Fb - 1,850.0 psi  
Fc - Prll 1,650.0 psi  
Fc - Perp 650.0 psi  
Fv 265.0 psi  
Fi 1,100.0 psi

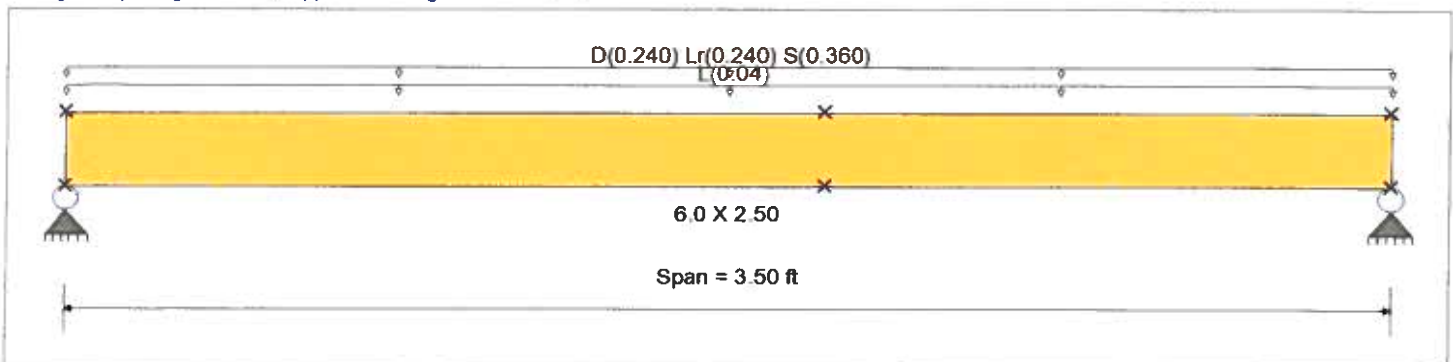
E : Modulus of Elasticity

Ebend-xx 1,800.0 ksi  
Eminbend-xx 930.0 ksi  
Ebend-yy 1,600.0 ksi  
Eminbend-yy 830.0 ksi  
Density 31.20 pcf  
Repetitive Member Stress Increase

**Unbraced Lengths**

First Brace starts at 2.0 ft from Left-Most support

Regular spacing of lateral supports on length of beam = 2.0 ft

**Applied Loads**

Service loads entered. Load Factors will be applied for calculations.

Beam self weight calculated and added to loads

Loads on all spans...

Uniform Load on ALL spans : D = 0.020, Lr = 0.020, S = 0.030 ksf, Tributary Width = 12.0 ft

Uniform Load : L = 0.040, Tributary Width = 1.0 ft

**DESIGN SUMMARY**

Design OK

Maximum Bending Stress Ratio	=	0.630 : 1	Maximum Shear Stress Ratio	=	0.300 : 1
Section used for this span	=	6.0 X 2.50	Section used for this span	=	6.0 X 2.50
fb: Actual	=	2,610.43 psi	fv: Actual	=	137.24 psi
Fb: Allowable	=	4,145.28 psi	Fv: Allowable	=	457.92 psi
Load Combination	=	+1.20D+0.50L+1.60S	Load Combination	=	+1.20D+0.50L+1.60S
Location of maximum on span	=	1.750 ft	Location of maximum on span	=	3.296 ft
Span # where maximum occurs	=	Span # 1	Span # where maximum occurs	=	Span # 1

**Maximum Deflection**

Max Downward Transient Deflection	0.087 in	Ratio =	483 >= 360
Max Upward Transient Deflection	0.000 in	Ratio =	0 < 360
Max Downward Total Deflection	0.146 in	Ratio =	288 >= 240
Max Upward Total Deflection	0.000 in	Ratio =	0 < 240

**Maximum Forces & Stresses for Load Combinations**

Load Combination	Segment Length	Span #	Max Stress Ratios				Moment Values							Shear Values			
			M	V	$\lambda$	$C_{FN}$	$C_i$	$C_r$	$C_m$	$C_t$	$C_L$	Mu	fb	Fb	Vu	fv	Fv
+1.40D														0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.322	0.153	0.60	1.000	1.00	1.00	1.00	1.00	1.00	0.52	1,001.22	3108.96	0.53	52.64	343.44
Length = 1.507 ft	1		0.316	0.153	0.60	1.000	1.00	1.00	1.00	1.00	1.00	0.51	981.96	3108.96	0.53	52.64	343.44
+1.20D+0.50Lr+1.60L						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.338	0.161	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.73	1,399.15	4145.28	0.74	73.56	457.92
Length = 1.507 ft	1		0.331	0.161	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.71	1,372.24	4145.28	0.74	73.56	457.92
+1.20D+1.60L+0.50S						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00
Length = 1.993 ft	1		0.380	0.181	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.82	1,575.55	4145.28	0.83	82.83	457.92



Title Block Line 1

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Brown and Associates

**DESCRIPTION: TREEHOUSE FLOOR**

Load Combination	Segment Length	Span #	Max Stress Ratios			$\lambda$	$C_{FN}$	$C_i$	$C_r$	$C_m$	$C_t$	$C_L$	Moment Values			Shear Values		
			M	V									Mu	fb	Fb	Vu	fv	Fv
Length = 1.507 ft +1.20D+1.60Lr+0.50L	1		0.373	0.181	0.80	1.000	1.00	1.00	1.00	1.00	1.00	0.80	1,545.24	4145.28	0.83	82.83	457.92	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.494	0.235	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.07	2,045.95	4145.28	1.08	107.56	457.92	
Length = 1.507 ft +1.20D+1.60Lr	1		0.484	0.235	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.05	2,006.59	4145.28	1.08	107.56	457.92	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.479	0.228	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.03	1,987.15	4145.28	1.04	104.47	457.92	
Length = 1.507 ft +1.20D+0.50L+1.60S	1		0.470	0.228	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.02	1,948.93	4145.28	1.04	104.47	457.92	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.630	0.300	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.36	2,610.43	4145.28	1.37	137.24	457.92	
Length = 1.507 ft +1.20D+1.60S	1		0.618	0.300	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.33	2,560.22	4145.28	1.37	137.24	457.92	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.616	0.293	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.33	2,551.63	4145.28	1.34	134.14	457.92	
Length = 1.507 ft +1.20D+0.50Lr+0.50L	1		0.604	0.293	0.80	1.000	1.00	1.00	1.00	1.00	1.00	1.30	2,502.55	4145.28	1.34	134.14	457.92	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.245	0.117	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.66	1,269.79	5181.60	0.67	66.76	572.40	
Length = 1.507 ft +1.20D+0.50L+0.50S	1		0.240	0.117	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.65	1,245.36	5181.60	0.67	66.76	572.40	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.279	0.133	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.75	1,446.19	5181.60	0.76	76.03	572.40	
Length = 1.507 ft +1.20D+0.50L+0.70S	1		0.274	0.133	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.74	1,418.37	5181.60	0.76	76.03	572.40	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.320	0.152	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.86	1,657.87	5181.60	0.87	87.16	572.40	
Length = 1.507 ft +0.90D	1		0.314	0.152	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.85	1,625.98	5181.60	0.87	87.16	572.40	
						1.000	1.00	1.00	1.00	1.00	1.00			0.00	0.00	0.00	0.00	
	Length = 1.993 ft	1	0.124	0.059	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.34	643.64	5181.60	0.34	33.84	572.40	
Length = 1.507 ft	1		0.122	0.059	1.00	1.000	1.00	1.00	1.00	1.00	1.00	0.33	631.26	5181.60	0.34	33.84	572.40	

**Overall Maximum Deflections**

Load Combination	Span	Max. "+" Defl	Location in Span	Load Combination	Max. "-" Defl	Location in Span
+D+S	1	0.1457	1.763		0.0000	0.000

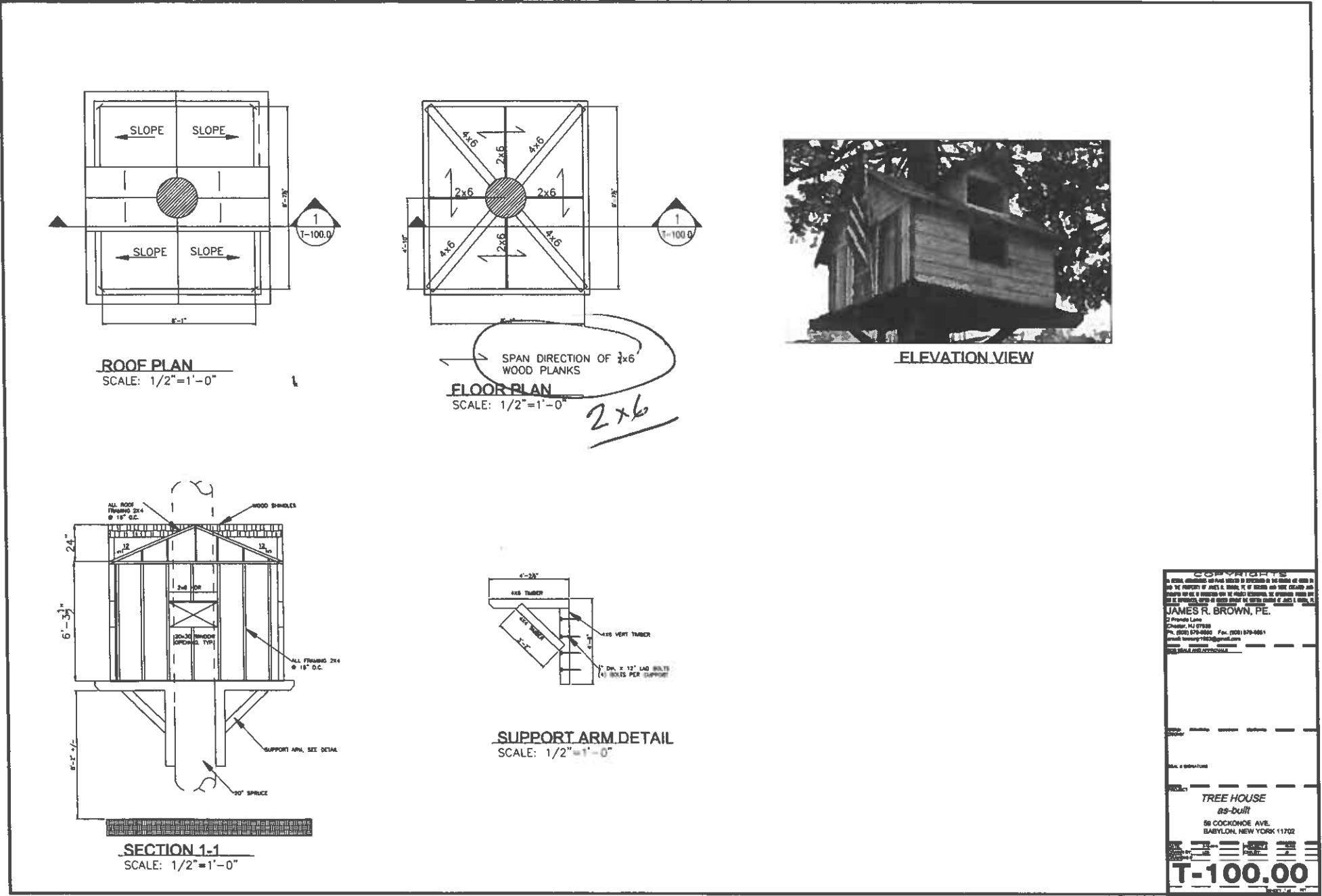
**Vertical Reactions**

Support notation : Far left is #1

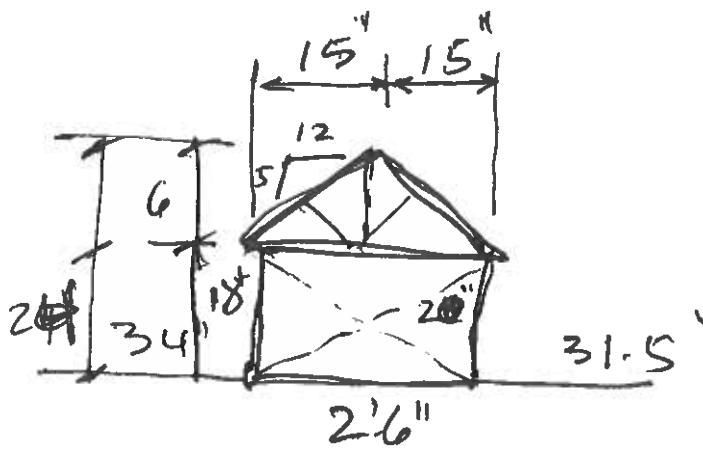
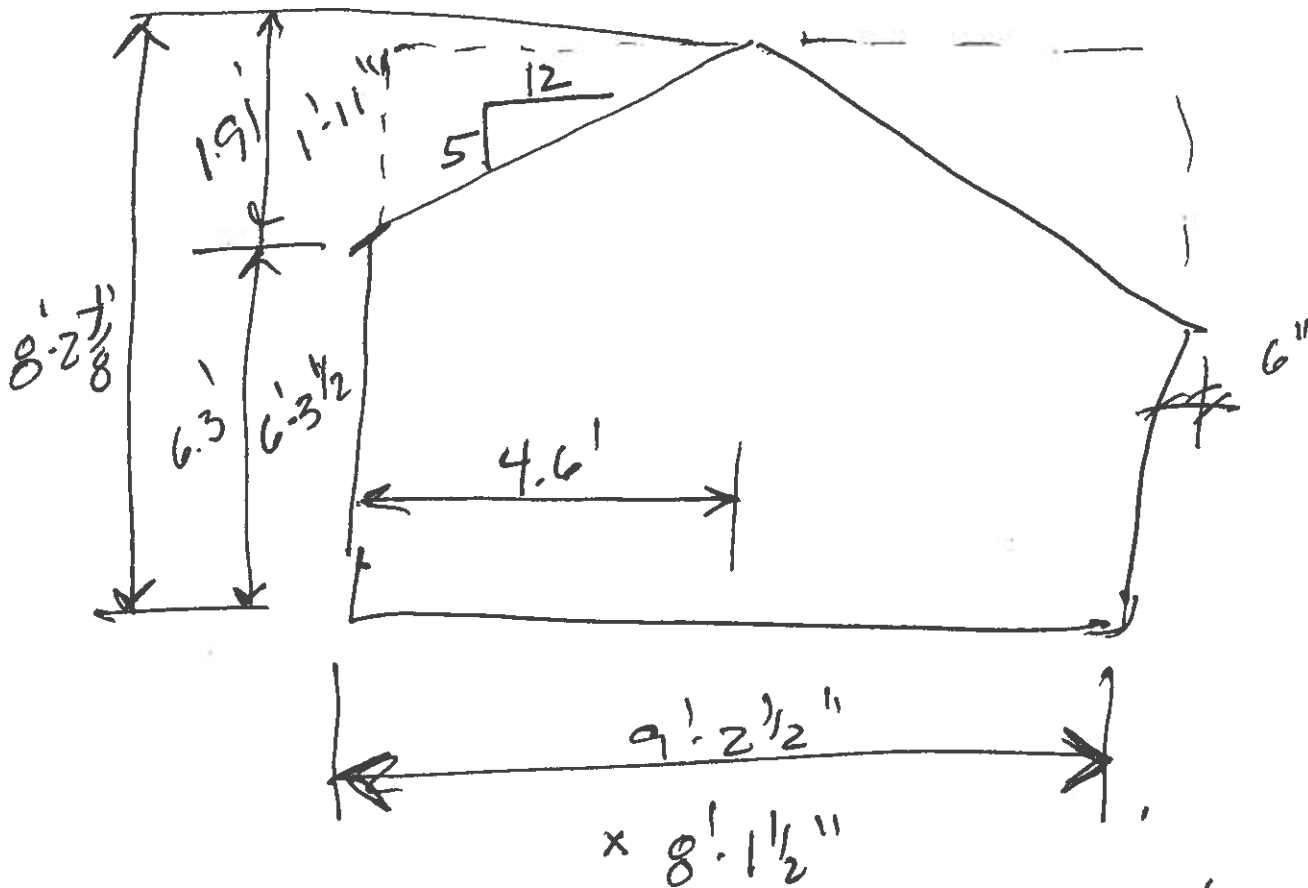
Values in KIPS

Load Combination	Support 1	Support 2
Overall MAXimum	1.056	1.056
Overall MINimum	0.630	0.630
D Only	0.426	0.426
+D+L	0.496	0.496
+D+Lr	0.846	0.846
+D+S	1.056	1.056
+D+0.750Lr+0.750L	0.793	0.793
+D+0.750L+0.750S	0.951	0.951
+0.60D	0.255	0.255
Lr Only	0.420	0.420
L Only	0.070	0.070
S Only	0.630	0.630









$$\frac{4.6 \times 5}{12} = 1.9167$$

$$= 23"$$

$$\sim 24"$$

$$\frac{1.25 \times 5}{12} = 6.25$$

$$= .52$$

$$= 6"$$

~~XXXXXXXXXX~~











Beam

S-2

$$M = 746 \text{ ft}\cdot\text{ft}$$

$$S = (4 \times 6) = 17.646 \text{ in}^3$$

$$I = 48.52 \text{ in}^4$$

$$A = 19.25 \text{ in}^2$$

Use Allow.  $S_{Loss} = 975 (F_b)$  Timbers

$$F_b = M/S = \frac{746(12)}{17.646} = 507.28 \text{ psi} < 975 \text{ OK}$$

Simple Span Col:

$$L_e = 0.8L = 0.8 \times 6.05' = 4.84'$$

$$\frac{L_e}{d} = \frac{4.84(12)}{3.5} = 16.5 < 50 \text{ OK}$$

$$F_{ce} = \frac{0.3 E}{(L_e/d)^2} = \frac{0.3(1,300,000)}{(16.5)^2} = 1432 \text{ psi/in}^2$$

$$\frac{F_{ce}}{F_c} = \frac{1432}{1121} = 1.27$$

$$F_c = 975 \times 1.15 = 1121 \text{ psi/in}^2$$

$$\begin{aligned} \bar{F}_c &= 1121 \left[ \frac{1 + 1.27}{2 \times .8} - \sqrt{\left( \frac{1 + 1.27}{2 \times .8} \right)^2 - \frac{1.27}{.8}} \right] \\ &= 857 \text{ psi/in}^2 \end{aligned}$$

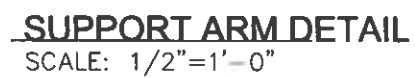
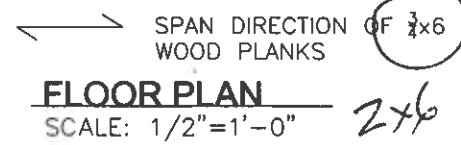
$$976 < 16,510$$

$P_{\text{Allow}}$

$$857 \times 19.25 = 16,510 \text{ #}$$

OK Lepper-Brown Dep 10





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**JAMES R. BROWN, PE.**

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 Chester, NJ 07830  
 Ph. (908) 879-0860 Fax. (908) 879-0861  
 email: brownj1953@gmail.com

DATE \_\_\_\_\_ DRAWING NO. \_\_\_\_\_ PROJECT NO. \_\_\_\_\_  
 000000 000000 000000

**YOUR REVIEW AND APPROVAL:** \_\_\_\_\_

\_\_\_\_\_  
 Sticker

**SEAL & SIGNATURE**

\_\_\_\_\_  
 PROJECT

**TREE HOUSE**  
*as-built*

50 COCKNOKE AVE.  
 BABYLON, NEW YORK 11702

DATE \_\_\_\_\_ 5-8-2019 PROJECT NO. \_\_\_\_\_ 19-118  
 DRAWN BY: LCB PROJECTS  
 DRAWING # \_\_\_\_\_ CDR BY: \_\_\_\_\_ 00

**T-100.00**

**Lepper-Brown Design**

**JACOBS**

Subject Treehouse Project COLLS- Structure  
 Sheet No. 1 of 1  
 Authored by JB Date 2/1/19 Checked by JB/BD Date 2/3/19

LOADS:

Live Load: 40 PSF  
 Dead Load: STEEL & WOOD  
 Snow: 25 PSF (Ground Snow)  
 Wind: 115 mph, Exposure B

CALCULATE Weight (DL):

Roof:  $(10'-3" \times 8'-6") \approx 87.12$   
 USE 88 SF.  
 $DL \text{ Roof} = 88 \times 10 \text{ PSF} = 880 \#$   
 $Dormers = \text{ADD } 50 \# \text{ EA.} = \frac{100}{980 \#}$   
 $= \text{say } 1000 \#$

WALLS:  $(\text{circle}) \times 6.3' \times [9.3' + 8.3' + 9.3' + 8.3'] \times 10 \text{ PSF}$   
 $= 2217 \#$

Floor:  $9.3' \times 8.3' \times 10 \text{ PSF} = \frac{772 \#}{3988.9 \#}$   
 TOTAL WT = say 4000#  
 (This is conservative)

GRAVITY Load TO EA. Leg Support = 1000#

WIND:  $\approx$  Pressure = 21 PSF  
 BASED ON 115 mph

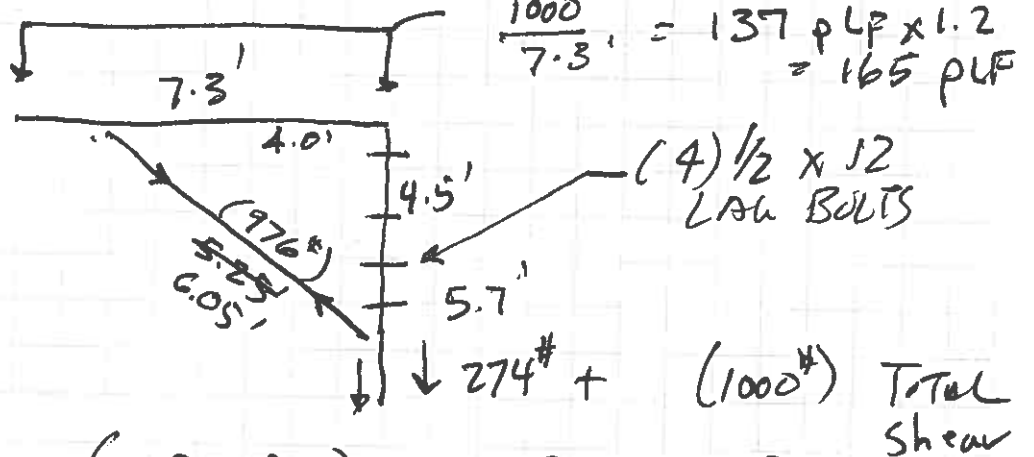
~~$\times 1.2$   
 $DL = 1200 \#$~~



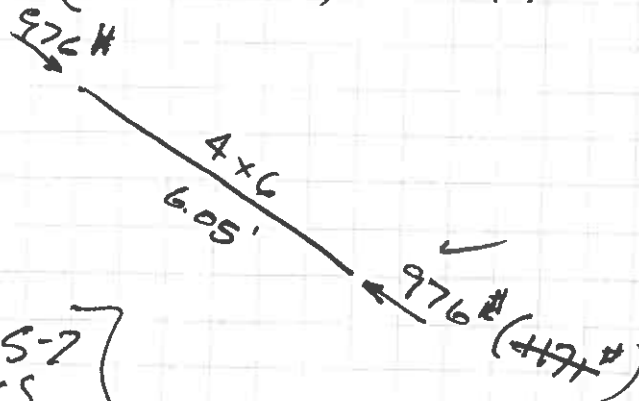
**JACOBS**

Subject TREEHOUSE Project CALLS-Structure  
 Sheet No. 2 of       
 Authored by JB Date 2/1/19 Checked by BO Date 2/3/19

LEG Support :



DIAG:  $4 \times 6 (3.5 \times 5.5) = 19.25 \text{ in}^2$



[SEE S-7  
CALLS]

CHECK LAG BOLTS:

SHEAR CAP. =  $624\#$

$(4) \times 624\# = 2496$

$\frac{2496}{\frac{1000}{1200}} = 2.5$

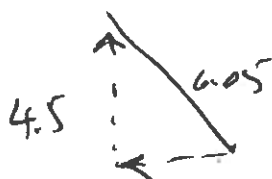
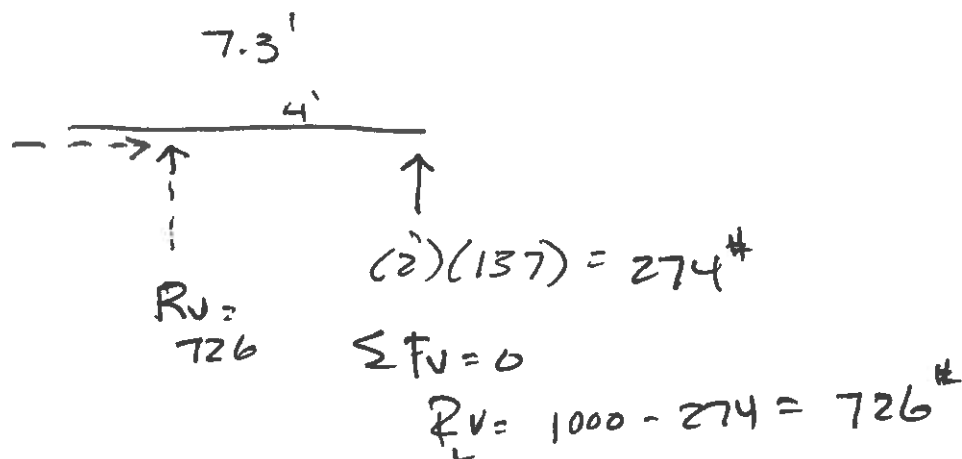
$\frac{2.5}{2.5} \text{ SAFETY FACTOR (Shear)}$

OK

1.5 OK

S-1

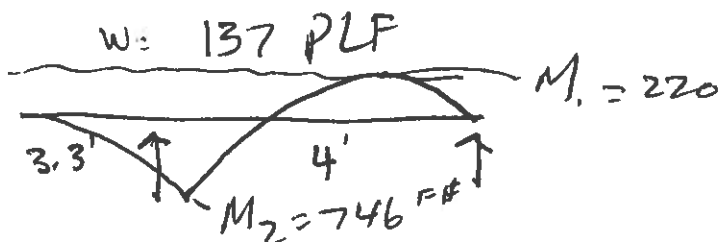
Supplemental  
CALCS;



$$\frac{4.5}{726} \times \frac{6.05}{x} \therefore x = \frac{(6.05)(726)}{4.5}$$

$$x = 976$$

Horizontal Arm:



$$M_1 = \frac{w}{8l^2} (1+a)^2 (1-a)^2 = \frac{137}{8(4)} (4+3.3)^2 (4-3.3)^2 = 220 \text{ F-#}$$

$$M_2 = \frac{wa^2}{2} = \frac{137(3.3)^2}{2} = 746 \text{ F-#}$$





Beam

S-2

$$M = 746 \text{ ft}\cdot\text{ft}$$

$$S = (4 \times 6) = 17.64 \text{ in}^3$$

$$I = 48.52 \text{ in}^4$$

$$A = 19.25 \text{ in}^2$$

Use Allow. Stress = 975 ( $F_b$ ) Timbers

$$F_b = M/S = \frac{746(12)}{17.64} = 507.28 \text{ psi} < 975 \text{ OK}$$

Simple Span Col:

$$L_e = 0.8L = 0.8 \times 6.05' = 4.84'$$

$$\frac{L_e}{d} = \frac{4.84(12)}{3.5} = 16.5 < 50 \text{ OK}$$

$$F_{ce} = \frac{0.3 E}{(L_e/d)^2} = \frac{0.3(1,300,000)}{(16.5)^2} = 1432 \text{ psi/in}^2$$

$$\frac{F_{ce}}{F_c} = \frac{1432}{1121} = 1.27$$

$$F_c = 975 \times 1.15 = 1121 \text{ psi/in}^2$$

$$\begin{aligned} \bar{F}_c &= 1121 \left[ \frac{1 + 1.27}{2 \times .8} - \sqrt{\left( \frac{1 + 1.27}{2 \times .8} \right)^2 - \frac{1.27}{.8}} \right] \\ &= 857 \text{ psi/in}^2 \end{aligned}$$

$P_{\text{Allow}}$

$$857 \times 19.25 = 16,510 \text{ lb}$$

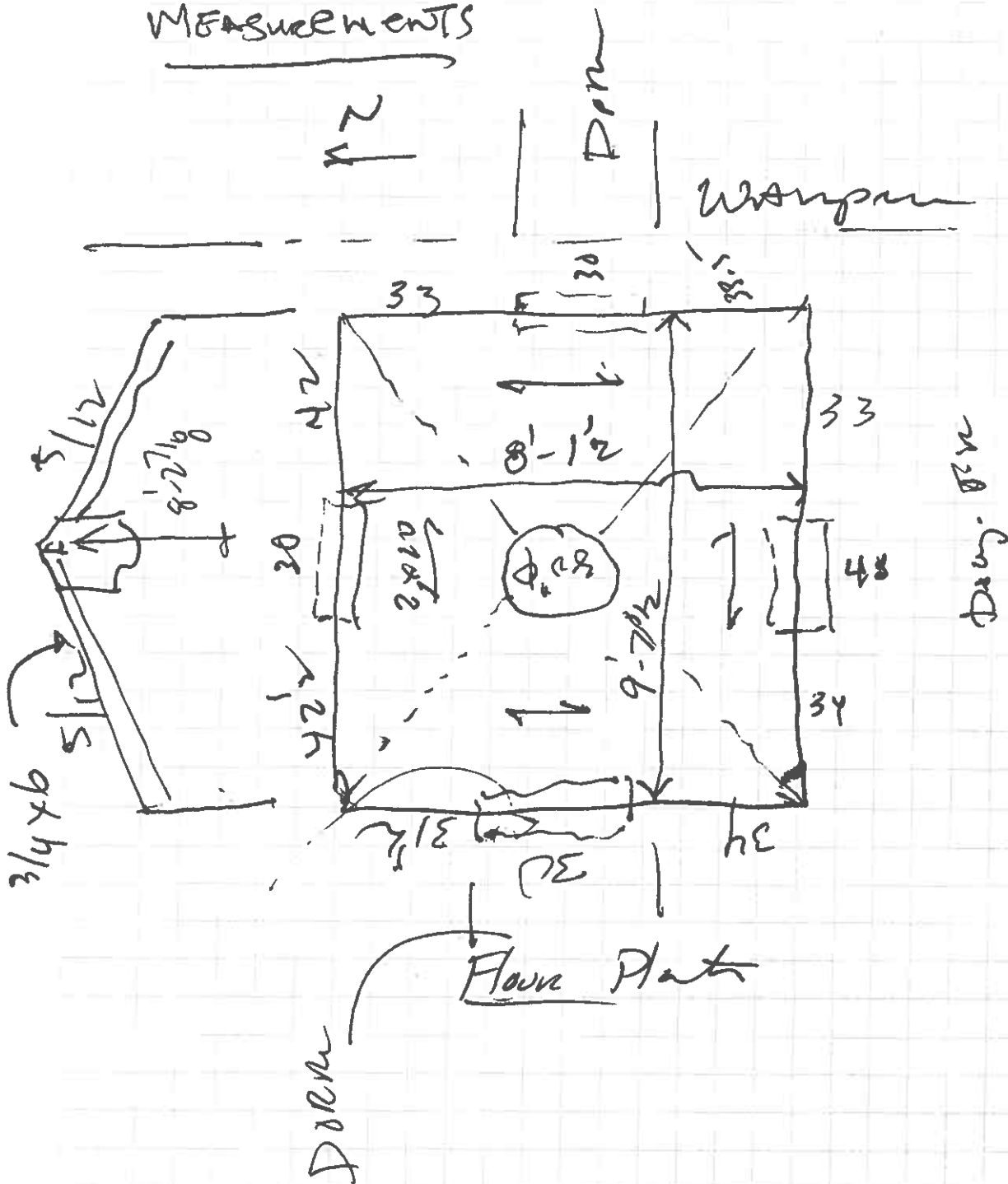
Lepper-Brown Depo 16  
OK 976



**JACOBS**

Subject \_\_\_\_\_ Project \_\_\_\_\_  
Sheet No. \_\_\_\_\_ of \_\_\_\_\_  
Authorized by \_\_\_\_\_ Date \_\_\_\_\_ Checked by \_\_\_\_\_ Date \_\_\_\_\_

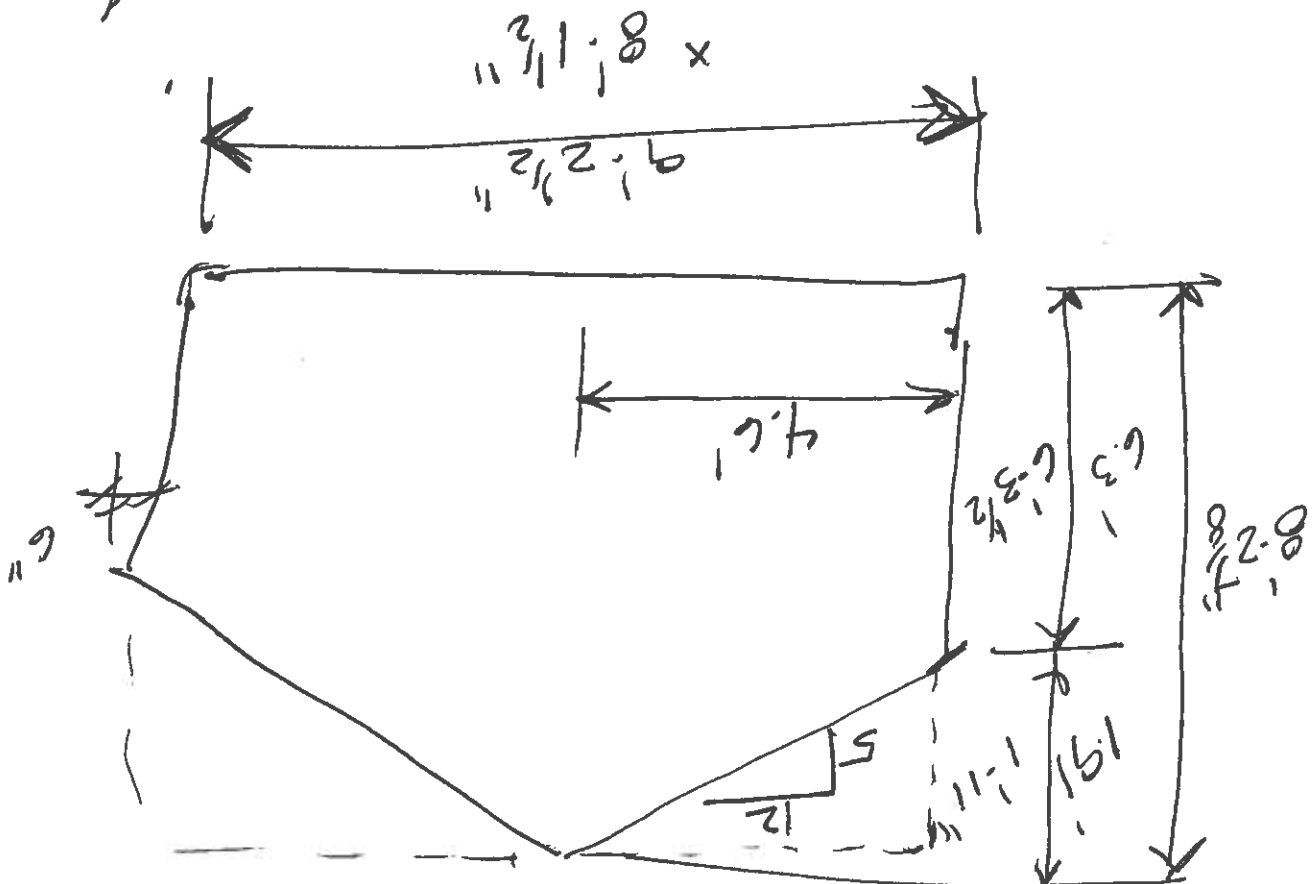
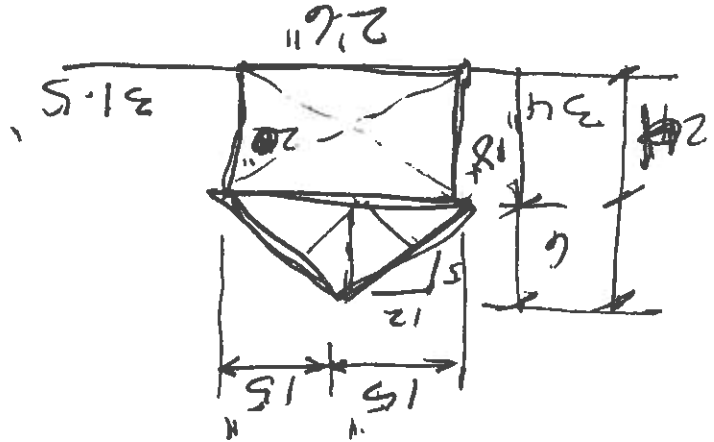
MEASUREMENTS



$$\begin{array}{r} 12 \\ 25 \\ \hline 1.25 \times 5 = 6.25 \end{array}$$

$$\begin{array}{r} 24 \\ 23 \\ \hline 4.6 \times 5 = 19.167 \end{array}$$

4 Ocean Lin.





Page 1  
March 22, 2021

RECEIVED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

APR 20 2021

-----X  
JOHN LEPPER and NOELLE LEPPER, individually and as parents and natural guardians of their infant children, B.J.L. and B.I.,

Claimant,

-against-

VILLAGE OF BABYLON and RALPH SCORDINO, Mayor  
KEVIN MULDOWNEY, Deputy Mayor, ROBYN SILVESTRI,  
Village Trustee, TONY DAVIDA, Village Trustee,  
MARY ADAMS, Mayor, STEPHEN FELLMAN, Village of  
Babylon Building Inspector, SUZANNE SCHETTINO,  
Department of Public Works, GERARD GLASS, Esq.,  
Village of Babylon Attorney, DEBORAH LONGO,  
Planning Board, Village of Babylon, each  
individually and in their official capacity,  
and John and/or Jane Doe, unnamed, unidentified  
complainants,

Respondents.

Index No.: 2:18-CV-07011

-----X  
Lexitas-LegalView  
Videoconference

March 22, 2021  
10:10 a.m.

1  
2  
3 EXAMINATION BEFORE TRIAL of  
4 JAMES R. BROWN, the Non-Party Witness herein, held  
5 via videoconference at the above-mentioned time,  
6 taken before a Certified Stenotype Reporter and  
7 Notary Public of the State of New York, pursuant  
8 to subpoena.  
9  
10  
11  
12  
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14  
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19  
20  
21  
22  
23  
24  
25



1  
2 A P P E A R A N C E S:

3  
4 THE LAW OFFICES OF COREY H. MORRIS

5 Attorneys for Plaintiff

6 135 Pinelawn Road, Suite 250S

7 Melville, New York 11747

8 BY: COREY H. MORRIS, ESQ.

9 (VIA VIDEOCONFERENCE)

10 EMAIL: Cory.H.Morris@protonmail.com

11  
12 BY: VICTOR JOHN YANNACONE, JR., ESQ.

13 OF COUNSEL

14 (VIA VIDEOCONFERENCE)

15  
16  
17 KELLY, RODE & KELLY, LLP

18 Attorneys for Defendants

19 330 Old Country Road, Suite 305

20 Mineola, New York 11501

21 BY: ERIC P. TOSCA, ESQ.

22 (VIA VIDEOCONFERENCE)

23 EMAIL: Eptosca@krklaw.com

24 FILE NO.: PDG/EPT/CMG 148530-752

1  
2 C O N T I N U E D   A P P E A R A N C E S :  
3

4           LAW OFFICE OF DAVID A. ADHAMI

5                   Attorney For the Non-Party Witness

6                   JAMES R. BROWN

7                   233 East Shore Road, Suite 210

8                   Great Neck, New York 11023  
9

10           BY:       DAVID A. ADHAMI, ESQ.

11                   (VIA VIDEOCONFERENCE)

12           EMAIL:   David@adhamilaw.com  
13

14  
15  
16  
17 A L S O       P R E S E N T :

18                   Shannon Fillmore, Esq.

19                   Kelly, Rode & Kelly  
20  
21  
22  
23  
24  
25



1  
2 J A M E S R. B R O W N, the Non-Party Witness  
3 herein, having been duly sworn by the Notary  
4 Public, was examined and testified as follows:

5 (Defendant's Exhibit A,  
6 certification documents, were hereby  
7 marked for identification, as of this  
8 date.)

9 (Plaintiff's 1 - 7, Multiple  
10 documents, were marked as of this  
11 date.)

12 THE COURT REPORTER: State your  
13 name for the record, please.

14 THE WITNESS: James R. Brown.

15 THE COURT REPORTER: State your  
16 address for the record, please.

17 THE WITNESS: 2 Francis Lane,  
18 Chester, New Jersey 07930.

19 MR. ADHAMI: Counsel, I'd like  
20 to reserve my clients's right to  
21 review the transcript prior to it  
22 being finalized. And, also, I don't  
23 know if there are any stipulations  
24 stated on the record?

25 MR. TOSCA: It's a non-party

1 J. R. BROWN

2 been completed?

3 A. Yes. Correct.

4 Q. And that any reasonable person would  
5 finish the job and complete it before they would  
6 call it finished, wouldn't they?

7 A. Yes --

8 MR. TOSCA: Objection.

9 Q. You can answer the question.

10 A. In my estimation that is correct.

11 Q. All right. Did you see the children  
12 have any difficulty even using the temporary  
13 ladder getting in and out of the tree house?

14 A. Of course they had the assistance of  
15 their father who was there, but I didn't see any  
16 problem with them.

17 Q. And are you aware of whether or not  
18 that eventually there would be a more permanent  
19 kind of means of ingress and egress to the  
20 platform and the tree house?

21 MR. TOSCA: Objection.

22 Q. Answer it anyway.

23 A. Only as stated by Mr. Lepper, upon  
24 completion that there would be adequate stairs  
25 going into and out of the tree house.



1 J. R. BROWN

2 Q. In the course of your regular  
3 professional activities as a structural engineer,  
4 have you had occasion to examine and evaluate  
5 wooden structures?

6 A. Yes, I have.

7 MR. TOSCA: Objection.

8 Q. Are you familiar enough with timbers  
9 to estimate size visually?

10 A. Rough size, yes.

11 Q. You can tell the difference between a  
12 4 by 6 and a 2 by 4, can't you?

13 A. Yes, I can.

14 Q. And you can do that without measuring  
15 it?

16 MR. TOSCA: Objection.

17 A. Yes. In most cases I can do it.

18 Q. Now, there was a question that's been  
19 gone over and over in the course of the direct  
20 examination with reference to these diagonal  
21 members.

22 These diagonal members performed some  
23 kind of purpose, do they not, in this kind of  
24 construction?

25 A. Yes, they do.

1 J. R. BROWN

2 Q. What's the purpose?

3 A. Supporting the platform floor of the  
4 tree.

5 Q. And are they different in length  
6 sometimes was because of the fact that they are  
7 anchored to the tree trunk?

8 A. That's correct.

9 Q. Is the tree trunk roughly vertical as  
10 it passes through the tree house?

11 A. It's roughly plumb.

12 Q. That means perpendicular to the  
13 floor?

14 A. Correct.

15 MR. MORRIS: For the purpose of  
16 the record, P-L-U-M-B.

17 THE WITNESS: Correct.

18 Q. All right. Now, you said that the  
19 timber material was Douglas Fir, and then you  
20 indicated that the owner, Mr. Lepper told you that  
21 it was Doug Fir.

22 Are you familiar enough with Douglas  
23 Fir in construction materials to believe that that  
24 was a reasonable description of the building  
25 material?



1 J. R. BROWN

2 A. Yes.

3 Q. Have you ever worked with and used  
4 Doug Fir as a building material in any work you've  
5 supervised or worked on?

6 A. Yes, I have.

7 Q. Are you familiar with the  
8 characteristics of Doug Fir?

9 A. Yes, I am.

10 Q. As the building material for this  
11 tree house, was it an appropriate building  
12 material?

13 MR. TOSCA: Objection. Any  
14 questions with regard to his opinions  
15 as an expert I'm going to object  
16 to --

17 MR. YANNACONE: Counsel, for the  
18 record, you opened the door. You  
19 asked him not once but three times  
20 using the word opinion. So, we'll  
21 take that --

22 MR. TOSCA: His opinion as a  
23 layperson.

24 MR. YANNACONE: No, he's not a  
25 layperson. He happens to be a

1 J. R. BROWN

2 layperson who has a license as a  
3 professional engineer.

4 MR. TOSCA: And I don't disagree  
5 with that --

6 MR. YANNACONE: Madam Reporter,  
7 would you be kind enough to read back  
8 the question for the witness?

9 MR. TOSCA: Just note for the  
10 record, you are starting to ask  
11 expert opinion testimony and he is  
12 not presented here for that reason.  
13 We've identified him as a fact  
14 witness. I'll object to anything --

15 MR. MORRIS: Counsel, you have  
16 your objection limited to just that.  
17 If there is an issue let's call the  
18 court.

19 MR. YANNACONE: Well, let's  
20 get --

21 MR. TOSCA: If you want to call  
22 the court, call the court. I don't  
23 care.

24 MR. YANNACONE: Let's proceed.  
25 Just answer the question.



1 J. R. BROWN

2 We'll take it up with the judge  
3 later.

4 Madam Reporter, will you read  
5 back the question for the witness?

6 (The requested portion of the  
7 record was read by the reporter.)

8 A. Yes.

9 Q. As someone who has constructed the  
10 tree house, without any reference to your  
11 qualifications as a professional engineer, was  
12 Douglas Fir an appropriate building material for a  
13 tree house?

14 A. I think Douglas Fir is an appropriate  
15 material for tree houses, yes.

16 Q. Now, in the course of your life and  
17 living in New Jersey, have you had occasion to  
18 observe the weather on the east coast?

19 A. Yes, I have.

20 Q. Are you familiar with the fact that  
21 since you first examined this tree house there  
22 have been a number of severe storms which have  
23 affected the entire east coast, particularly Long  
24 Island?

25 MR. TOSCA: Objection to the

1 J. R. BROWN

2 description of the storms.

3 MR. YANNACONE: Okay.

4 Q. Are you aware of the fact that storms  
5 have been recorded and reported with respect to  
6 Long Island and the east coast over the last  
7 two years?

8 A. Yes, I am.

9 Q. And are you aware that some of those  
10 storms caused extensive property damage?

11 A. Yes, I am.

12 Q. And are you familiar with pictures  
13 that have appeared in the press and on television  
14 of trees uprooted and severe damage associated  
15 with those storms?

16 A. Yes, I am.

17 Q. And if the tree house, incomplete as  
18 it is, is still standing without any damage, after  
19 two years of those storms, would it be your  
20 opinion as a layman and a father that this was a  
21 safe and appropriate structure?

22 MR. TOSCA: Objection. You're  
23 calling for expert testimony again.  
24 This is not expert testimony.

25 MR. YANNACONE: Only as a



1 J. R. BROWN

2 father. I'll qualify him.

3 (Simultaneous speaking.)

4 Q. In your lifetime, have you fathered  
5 children?

6 A. Yes, I have.

7 Q. As a result of that, are you  
8 generally referred to by other people as a father?

9 A. Yes, I am.

10 Q. Do you have to be an expert to  
11 determine whether the parent, the male parent of a  
12 child, is a father or not?

13 MR. TOSCA: Objection to  
14 relevance.

15 MR. YANNACONE: We'll take that  
16 up later.

17 MR. TOSCA: I understand. I'm  
18 objecting to it.

19 MR. MORRIS: Counselor, keep  
20 your objections to just that,  
21 objection.

22 Q. Answer the question, Mr. Brown.

23 A. I feel that I've -- since I've raised  
24 three children and five grandchildren that I am an  
25 expert.

1 J. R. BROWN

2 Q. All right. Now, as a layman, as a  
3 father, is that tree house appropriate for the use  
4 intended?

5 MR. TOSCA: Objection.

6 Q. You can answer.

7 MR. TOSCA: Objection.

8 Q. As a father.

9 A. In my opinion, it's an adequate area  
10 for children to play in.

11 Q. Are you familiar with the fact that  
12 the east cost has been the site of considerable  
13 property damage associated with wind, rain,  
14 hurricanes and other storms with high winds? Are  
15 you not?

16 A. I am.

17 Q. And as a layman, referring only to  
18 television and other means of mass media  
19 information, did those storms represent enough  
20 energy to cause significant structural damage to  
21 poorly constructed buildings?

22 MR. TOSCA: Objection.

23 A. In my opinion, yes.

24 Q. And if this tree house incomplete as  
25 it is withstood all those storms, would you



1 J. R. BROWN

2 believe, as a layman, that it might survive future  
3 storms?

4 MR. TOSCA: Objection.

5 A. I would base my opinion based on what  
6 the storms that it has safely endured, that it's  
7 built safely, strong enough to enter those kind of  
8 environmental pressures.

9 Q. Now, in Exhibits 2 to 5, Pages 2 to  
10 5, Exhibit A, there are a number of calculations  
11 dealing with structural matters that you prepared,  
12 and you prepared them in the course of your  
13 professional activities as a professional  
14 engineer, did you not?

15 A. Yes.

16 Q. And they represent your work product  
17 as a professional engineer, do they not?

18 A. Yes.

19 Q. And you indicated in response to  
20 counsel's question that you were familiar with a  
21 document referred to as the International Building  
22 Code; is that correct?

23 A. That's correct.

24 Q. And you indicated that you were also  
25 familiar with the American Society of Civil

1 J. R. BROWN

2 Engineering Codes, are you not?

3 A. I am.

4 Q. And you indicated that the State of  
5 New York refers to both of those documents and  
6 incorporates them by reference, does it not?

7 A. That is correct.

8 Q. And you know that because you are a  
9 licensed professional engineer in the State of New  
10 York, are you not?

11 A. That's correct.

12 Q. Now, is there anything in either of  
13 those documents that specifically deals with the  
14 construction of tree houses?

15 A. Not so much.

16 Q. When you say "not so much," tree  
17 houses are treated like any other structure in  
18 those codes, are they not?

19 A. That's correct, but you can't occupy  
20 them. You cannot live in them.

21 Q. Correct. All right.

22 Now, is there any indication to you  
23 when you examined the tree house that there was  
24 any intention for anyone to live there?

25 A. No.



1 J. R. BROWN

2 MR. TOSCA: Objection.

3 Q. What was the answer?

4 A. No.

5 Q. Was there a toilet in there?

6 A. No.

7 Q. Did you see any plumbing fixtures?

8 A. No.

9 Q. Did you see any plumbing studs or  
10 preparation?

11 A. I did not, no.

12 Q. Did you see any kitchen appliances?

13 A. No.

14 Q. Did you see anything that might pass  
15 for a bed such as a loft?

16 A. No.

17 Q. Was there any indication to you as a  
18 professional engineer, but more as an ordinary  
19 layman, that anybody ever intended to live in that  
20 tree house?

21 MR. TOSCA: Objection.

22 A. No.

23 Q. Now, do the codes, the International  
24 Building Code and the regulations of the American  
25 Society of Civil Engineers deal with structures

1 J. R. BROWN

2 which are not intended for habitation?

3 MR. TOSCA: Objection. Again,  
4 you're asking for an expert opinion.

5 MR. YANNACONE: You asked him  
6 the question, Counselor.

7 Q. But go ahead, answer it.

8 MR. TOSCA: We didn't go into  
9 that.

10 MR. MORRIS: I believe you did  
11 open the door, you asked --

12 MR. TOSCA: Certainly did not.

13 Q. Okay, just answer the question.

14 A. Do you want me to answer the  
15 question?

16 Q. Yes, please.

17 A. The code refers to risk category  
18 structures. And this case would fall into a risk  
19 Category A, which is by way of the lowest --  
20 lowest of the requirements for building  
21 structures.

22 Q. And based on your physical  
23 examination of that structure, and the  
24 calculations you made as a result of that physical  
25 examination, do you believe that the structure --



1 J. R. BROWN

2 withdrawn.

3 Based on your physical examination,  
4 does the structure you examined meet the  
5 requirements of the International Building Code?

6 MR. TOSCA: Objection.

7 Q. With respect to structure A?

8 MR. TOSCA: Objection. Again  
9 going into expert opinion.

10 Q. Answer the question, please.

11 A. My opinion it's a safe structure.

12 MR. MORRIS: Before we continue.  
13 Counselor, object and that's it and  
14 then we move on. Right? There's no  
15 confusion to this process, right?

16 MR. TOSCA: I'm objecting, Mr.  
17 Morris --

18 MR. MORRIS: Of course, and --

19 MR. TOSCA: I'm allowed to  
20 object.

21 MR. MORRIS: And, again, just  
22 don't speak after you object. Right?  
23 That's known as a speaking objection.  
24 Can we agree that you're not going to  
25 do that? You're going to stop that?

1 J. R. BROWN  
2 leave a patent there or something?

3 A. No.

4 MR. MORRIS: It's been asked and  
5 answered.

6 MR. TOSCA: No further  
7 questions. Thank you, Mr. Brown.

8 (Whereupon, the proceedings were  
9 concluded at 1:29 p.m.)

10

11

12

13

\_\_\_\_\_  
JAMES R. BROWN

14

15 Subscribed and sworn to  
16 before me this \_\_\_\_\_  
17 day of \_\_\_\_\_, 2021.

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I N D E X

WITNESS	EXAMINATION BY	PAGE
James R. Brown	Mr. Tosca	6, 111 132

Mr. Yannacone	114
---------------	-----

R E Q U E S T S

Photographs	19
-------------	----

Video	25
-------	----

Emails	26
--------	----

Letters	28
---------	----

I N S E R T

- N O N E -

R U L I N G S

- N O N E -

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EXHIBITS

Plaintiff's	DESCRIPTION	PAGE
1	Village of Babylon Building Permit Form Five pages	6
2	Letter from Village of Babylon Twelve pages	6
3	Expert Disclosure Mr. Danatzko, P.E. Seventy four pages	6
4	Laser color photographs Six pages.	
5	Letter from James R. Brown To John Lepper One page	6
6	Document - Empire State Layout, Inc. One page	6
7	Handwritten diagrams Seven pages	6
DEFENDANT'S		
A	Certification documents Nineteen pages	6



CERTIFICATION

STATE OF NEW YORK     )  
COUNTY OF NASSAU     )

I, Emily Gallagher-Merro, a  
stenotype reporter and Notary Public within and  
for the State of New York, do hereby certify that:

JAMES R. BROWN

The witness whose Examination  
Before Trial is hereinbefore set forth, was first  
duly sworn by me, and that such Examination Before  
Trial is a true and accurate record of the  
testimony given by said witness; and I further  
certify that I am not related to any of the  
parties of this action by blood or marriage and  
that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 22nd day of March, 2021.

  
EMILY GALLAGHER-MERRO

March 22, 2021

Page 137

<b>A</b>	22:6,10,22,23	<b>answer (19)</b>	110:5 126:9	61:2,5 73:7
<b>a.m (1)</b>	26:14,18	22:7,9,21	<b>arm (17)</b>	86:8
1:20	28:22 31:21	32:20 40:24	51:9,10 52:10	<b>assumed (2)</b>
<b>able (6)</b>	32:18 33:2	74:22 82:8	52:20,21,23	69:10 79:25
24:11 34:10	35:13 40:19	116:12	53:11 56:18	<b>assumption (1)</b>
41:4,18 51:6	42:12 46:4,12	117:19 118:9	59:4 60:4,6,7	78:11
112:14	<b>adjustment (1)</b>	118:22	60:9 88:6,14	<b>attached (1)</b>
<b>above-menti...</b>	97:12	122:25	88:16 89:9	111:20
2:5	<b>admit (1)</b>	125:22 126:6	<b>arms (5)</b>	<b>attorney (4)</b>
<b>Absolutely (3)</b>	31:19	129:3 130:7	16:7,7 51:15	1:12 4:5 28:16
28:21 132:7,8	<b>admitted (1)</b>	130:13,14	51:19 57:6	30:2
<b>access (2)</b>	31:17	131:10	<b>arrived (1)</b>	<b>attorneys (3)</b>
11:24 12:7	<b>adult (2)</b>	<b>answered (5)</b>	35:5	3:5,18 27:25
<b>accessible (3)</b>	32:12,21	25:3 32:18	<b>article (1)</b>	<b>AutoCAD (4)</b>
70:12 71:3,5	<b>afterward (1)</b>	113:22	23:8	90:22 115:9,10
<b>accurate (5)</b>	21:7	116:11 133:5	<b>ASCE (1)</b>	115:12
98:24 107:13	<b>against- (1)</b>	<b>anybody (4)</b>	36:21	<b>available (1)</b>
107:14	1:8	19:11 45:17	<b>aside (1)</b>	114:14
116:21	<b>ago (10)</b>	49:9 129:19	9:14	<b>Avenue (4)</b>
136:15	8:12,12,14,19	<b>anyway (1)</b>	<b>asked (13)</b>	10:12 21:11
<b>accurately (1)</b>	10:4,22 29:6	118:22	24:25 25:22	35:9 40:13
74:22	40:4 43:17	<b>appear (1)</b>	32:18 67:25	<b>aware (6)</b>
<b>action (1)</b>	44:21	51:25	82:7 102:4	108:13,15,18
136:18	<b>agree (1)</b>	<b>appeared (1)</b>	113:22	118:17 124:4
<b>active (4)</b>	131:24	124:13	116:11	124:9
7:15,18,20,21	<b>ahead (4)</b>	<b>appears (1)</b>	117:21	<b>B</b>
<b>activities (2)</b>	57:24 102:9	107:14	121:19 130:5	<b>B (2)</b>
119:3 127:13	130:7 132:12	<b>appliances (1)</b>	130:11 133:4	5:2 20:9
<b>actual (10)</b>	<b>allowed (1)</b>	129:12	<b>asking (8)</b>	<b>B.I (1)</b>
44:24 70:11,18	131:19	<b>apply (1)</b>	32:22 33:6	1:5
81:3 87:12	<b>allowing (1)</b>	36:19	35:18 46:12	<b>B.J.L (1)</b>
88:25 90:7	22:8	<b>appreciate (2)</b>	81:25 82:3	1:5
92:21 97:14	<b>American (7)</b>	25:4 74:9	88:25 130:4	<b>Babylon (12)</b>
97:24	36:15 37:3,5,6	<b>appropriate (...)</b>	<b>assist (2)</b>	1:9,11,12,12
<b>ADAMS (1)</b>	37:12 127:25	121:11 123:12	34:7 115:5	10:12 27:4,5
1:10	129:24	123:14	<b>assistance (1)</b>	27:8 36:3,6
<b>address (3)</b>	<b>analysis (7)</b>	124:21 126:3	118:14	135:5,7
5:16 50:19,19	88:23 90:13	<b>approximate ...</b>	<b>assistant (1)</b>	<b>Bachelor (1)</b>
<b>adequate (3)</b>	97:13,17,22	8:13 13:6	34:15	9:23
90:3 118:24	98:7,17	<b>architect (2)</b>	<b>associate (1)</b>	<b>back (15)</b>
126:9	<b>anchored (1)</b>	23:20 24:5	102:18	28:13 46:19
<b>Adhami (24)</b>	120:7	<b>area (13)</b>	<b>associated (2)</b>	55:3,4 56:25
4:4,10 5:19 6:3	<b>and/or (2)</b>	14:17,18,19,20	124:14 126:13	57:2,25 59:15
6:6 10:10	1:13 72:18	15:12,13 16:4	<b>Association (3)</b>	62:24 84:17
13:15 19:7,16	<b>angle (3)</b>	79:21 83:8	37:4,7,13	87:9 107:4
	87:2,4,7	104:21 110:2	<b>assume (4)</b>	



March 22, 2021

Page 138

111:13 122:7	7:25 8:17	<b>blood (1)</b>	23:1 24:1	106:1 107:1
123:5	17:23 21:17	136:18	25:1,5 26:1	107:11 108:1
<b>backyard (1)</b>	28:4,7,10,15	<b>BO (4)</b>	26:12 27:1	109:1 110:1
11:4	50:2 53:5,16	94:15,19,23,24	28:1 29:1	111:1,13
<b>base (4)</b>	60:13 64:3,5	<b>Board (1)</b>	30:1 31:1	112:1 113:1
87:23 96:2	64:9,10,10,21	1:12	32:1 33:1,2	114:1,8 115:1
104:24 127:5	67:11,21 68:4	<b>bolt (2)</b>	34:1 35:1	116:1 117:1
<b>based (16)</b>	68:5,8 73:15	112:3,6	36:1 37:1	118:1 119:1
25:23 29:15	74:15 75:22	<b>bolts (13)</b>	38:1 39:1	120:1 121:1
46:25 52:8	77:16 78:14	18:14 111:16	40:1 41:1,9	122:1 123:1
56:11 61:18	78:18 79:12	111:18,19,24	41:18 42:1,3	124:1 125:1
90:7,13 91:9	83:8 84:13,13	112:9,19,25	42:14,23 43:1	125:22 126:1
92:10,11,13	84:14,15,16	113:7,8,12,14	44:1,13 45:1	127:1 128:1
92:23 127:5	84:24 85:11	113:16	45:7 46:1,9	129:1 130:1
130:22 131:3	85:22 86:25	<b>bottom (23)</b>	46:20 47:1,11	131:1 132:1
<b>basic (1)</b>	87:8,19,22	43:4,6 50:4	48:1 49:1,20	132:19 133:1
31:10	88:7,19 89:21	51:12 53:13	50:1,15 51:1	133:7,13
<b>basically (2)</b>	89:21 90:13	57:2,6 59:9	52:1 53:1	134:5 135:12
52:5 69:15	90:21,21 91:4	59:18 62:25	54:1 55:1	136:10
<b>basis (2)</b>	91:7,16 92:20	63:18 66:14	56:1 57:1,5	<b>building (19)</b>
23:24 109:22	93:7,15 95:24	66:25 67:14	58:1 59:1	1:11 9:10
<b>bates (30)</b>	96:7 97:9	69:4 74:9	60:1,4 61:1	36:10,12,14
42:20,20 43:6	98:15 100:24	82:17 85:17	61:11 62:1	37:9 97:2
43:20 44:24	101:6 102:14	100:22	63:1 64:1	109:12,23
45:5 46:6,8,9	103:17	102:24	65:1 66:1	120:24 121:4
46:10,11,18	105:10,16,16	105:13 108:2	67:1 68:1	121:10,11
47:8 48:4	105:18 106:8	112:18	69:1 70:1	123:12
49:21 53:14	106:8 113:21	<b>box (3)</b>	71:1 72:1	127:21
58:2 59:20	120:23 127:2	17:24 18:9	73:1 74:1,10	129:24
61:8,9,14,24	130:10,25	50:5	75:1 76:1	130:20 131:5
64:25 65:3	<b>better (1)</b>	<b>boxes (2)</b>	77:1 78:1	135:5
66:19 67:15	50:6	17:22 18:5	79:1 80:1	<b>buildings (1)</b>
84:21 104:18	<b>beyond (9)</b>	<b>bringing (2)</b>	81:1 82:1,8	126:21
106:25	15:20 64:23	108:13,16	82:19 83:1	<b>built (4)</b>
111:14	65:11,14,25	<b>broke (1)</b>	84:1 85:1	12:3 40:5
<b>BD (1)</b>	65:25,25	39:10	86:1 87:1	112:17 127:7
94:23	73:16 88:2	<b>Brown (168)</b>	88:1 89:1	<b>business (1)</b>
<b>beam (3)</b>	<b>big (1)</b>	2:4 4:6 5:14	90:1 91:1	23:22
47:18,21 48:15	40:8	6:1,11,16 7:1	92:1 93:1	
<b>beams (1)</b>	<b>birth (1)</b>	8:1 9:1 10:1	94:1 95:1	<b>C</b>
86:5	10:6	11:1 12:1	96:1 97:1	<b>C (4)</b>
<b>bear (1)</b>	<b>bit (3)</b>	13:1 14:1	98:1 99:1,22	3:2 4:2,2 20:9
99:21	49:19 76:16	15:1 16:1	100:1 101:1	<b>C-A-L-C-S (1)</b>
<b>bed (1)</b>	90:4	17:1 18:1	102:1 103:1	95:12
129:15	<b>block (2)</b>	19:1 20:1	103:13,23	<b>CALCS (1)</b>
<b>believe (75)</b>	50:18 73:25	21:1 22:1,10	104:1 105:1	95:12

March 22, 2021

Page 139

<b>calculated (2)</b> 75:3 101:17	<b>catch (1)</b> 28:14	125:12	<b>codes (9)</b> 35:25 36:10,12	<b>completion (1)</b> 118:24
<b>calculation (8)</b> 38:10 45:23 48:19 76:11 90:6 91:18,22 96:4	<b>category (3)</b> 37:21 130:17 130:19	<b>children (20)</b> 1:5 16:21 17:2 32:5,9,15,24 33:7,13,16 109:16,18,20 110:13 118:11 125:5 125:24 126:10 132:23,24	36:18,19,20 128:2,18 129:23	<b>compliant (1)</b> 14:11
<b>calculations (...)</b> 29:24 35:23 38:7 40:16 45:8,9 46:21 47:15 48:6,10 48:14,24 49:3 52:7 69:9 88:20,23 89:7 90:18,19,23 91:8,10,23 92:3,9,17,23 95:5,13,14 115:25 127:10 130:24	<b>cause (1)</b> 126:20	<b>City (2)</b> 7:13 9:4	<b>color (1)</b> 135:11	<b>component (3)</b> 16:3 19:14,17
	<b>caused (1)</b> 124:10	<b>Civil (4)</b> 6:18 36:15 127:25 129:25	<b>com (1)</b> 108:4	<b>computer (9)</b> 48:21,23 49:6 51:3,5 61:23 62:9 115:5 116:9
	<b>Cell (1)</b> 25:12	<b>Claimant (1)</b> 1:6	<b>come (7)</b> 22:24 25:23 45:8 56:20 64:12,14 115:12	<b>concluded (1)</b> 133:9
	<b>center (4)</b> 58:25 72:24 74:16 79:10	<b>clarify (2)</b> 82:15 83:23	<b>comes (2)</b> 20:21 23:3	<b>conclusion (1)</b> 78:6
	<b>certain (3)</b> 31:20 38:11 45:24	<b>clean (1)</b> 63:6	<b>comfortable ...</b> 31:25 32:4,8 32:14,21,23 33:7,12	<b>condition (1)</b> 79:8
	<b>Certainly (1)</b> 130:12	<b>clear (4)</b> 53:13 82:4 103:3 104:13	<b>coming (2)</b> 101:19 113:6	<b>configuratio...</b> 31:23 106:9
	<b>certification ...</b> 5:6 9:20 135:20 136:2	<b>clients's (1)</b> 5:20	<b>commercial...</b> 114:14	<b>confusion (3)</b> 81:20 102:16 131:15
<b>call (5)</b> 50:6 118:6 122:17,21,22	<b>certified (3)</b> 2:6 9:17,17	<b>climb (5)</b> 12:11 33:16 109:16,19,21	<b>communicate...</b> 25:19 27:24 28:3,5 29:3	<b>consecutive (2)</b> 20:6,8
<b>called (3)</b> 25:22 46:2 115:9	<b>certify (2)</b> 136:8,17	<b>climbing (2)</b> 32:2,12	<b>communicate...</b> 27:7	<b>conservative ...</b> 98:19,20
<b>calling (2)</b> 6:11 124:23	<b>change (1)</b> 98:14	<b>close (1)</b> 51:20	<b>communicati...</b> 27:16	<b>considerable ...</b> 126:12
<b>capacity (3)</b> 1:13 22:12 113:2	<b>Channel (5)</b> 21:17,21,23 25:17,21	<b>coast (3)</b> 123:18,23 124:6	<b>company (1)</b> 46:3	<b>construct (1)</b> 79:5
<b>capture (1)</b> 50:2	<b>characteristi...</b> 121:8	<b>Cockenoe (4)</b> 10:12 21:11 35:9 40:13	<b>complainant...</b> 1:14	<b>constructed (3)</b> 14:6 123:9 126:21
<b>care (1)</b> 122:23	<b>charge (1)</b> 24:15	<b>code (8)</b> 36:4,7,14 37:9 127:22 129:24 130:17 131:5	<b>complaints (2)</b> 109:8 110:4	<b>construction ...</b> 111:22 117:16 119:24 120:23 128:14
<b>Carolina (5)</b> 7:15,17 8:9,10 40:3	<b>check (3)</b> 112:19,24 113:4		<b>complete (3)</b> 31:7,17 118:5	<b>constructive ...</b> 18:11
<b>case (5)</b> 83:16 98:4 103:19 108:9 130:18	<b>checking (2)</b> 25:2 113:2		<b>completed (7)</b> 30:24 31:14 33:4 94:13 117:17,23 118:2	<b>contact (1)</b> 21:19
<b>cases (1)</b> 119:17	<b>Chester (1)</b> 5:18		<b>completely (2)</b> 17:15 75:9	<b>contained (2)</b> 50:16 115:6
	<b>child (1)</b>			<b>contemporan...</b> 115:22



March 22, 2021

Page 140

<b>continuation ...</b>	55:16 57:21	28:8,9,16	73:23 108:6	129:25
48:9,14	61:20 62:12	<b>corresponde...</b>	<b>cross-out (1)</b>	<b>dealing (1)</b>
<b>continue (1)</b>	62:23,23 66:9	28:6	108:6	127:11
131:12	66:10,13 67:3	<b>Cory.H.Mor...</b>	<b>crossed (3)</b>	<b>deals (1)</b>
<b>CONTINUE...</b>	67:20,22,23	3:10	67:5 73:23	128:13
111:11 132:17	68:2,7 69:12	<b>cost (1)</b>	97:11	<b>DEBORAH (...)</b>
<b>conversation ...</b>	69:23 70:11	126:12	<b>current (1)</b>	1:12
26:3 38:17	71:13,18,19	<b>counsel (22)</b>	31:18	<b>December (1)</b>
41:14 42:17	76:20 80:12	3:13 5:19	<b>currently (1)</b>	11:17
46:15 50:13	81:4,6 84:10	19:23 25:7	8:20	<b>decimal (3)</b>
99:15 111:6	85:7,8,16,20	26:13,17	<b>cut (2)</b>	72:2,14,18
<b>conversation...</b>	86:5,6,16	27:25 28:24	26:14 40:19	<b>deep (1)</b>
108:24	87:14 88:4	41:10 44:7		86:13
<b>conversion (1)</b>	89:18,19 90:7	54:6 57:24	<b>D</b>	<b>Defendant's ...</b>
74:18	90:8,16 93:23	59:16 64:4	<b>D (3)</b>	5:5 41:16
<b>copies (3)</b>	95:6 96:11	67:13 81:18	4:2 20:9 134:2	104:13
26:8 28:17,19	97:21 98:2	88:11,13	<b>damage (5)</b>	135:19
<b>copy (5)</b>	99:25 100:14	102:15 111:2	124:10,14,18	<b>Defendants (1)</b>
25:17 29:3	100:17,21,21	121:17	126:13,20	3:18
41:23 43:22	103:5,16	122:15	<b>Danatzko (3)</b>	<b>degree (3)</b>
43:23	104:11,22	<b>counsel's (1)</b>	38:2,4 135:9	87:4,5,6
<b>copyright (1)</b>	105:4,15	127:20	<b>dash (2)</b>	<b>degrees (1)</b>
50:19	106:2,7 108:8	<b>Counselor (4)</b>	71:8,10	87:6
<b>COREY (2)</b>	108:10,11	107:2 125:19	<b>date (15)</b>	<b>Department ...</b>
3:4,8	111:22,23	130:6 131:13	5:8,11 7:5 10:6	1:11
<b>corner (14)</b>	112:2,9,20	<b>Country (1)</b>	41:17 43:10	<b>depending (1)</b>
50:5 57:15	113:9,10,20	3:19	43:13,14,14	116:15
80:6 81:11,13	114:11	<b>COUNTY (1)</b>	44:4,22,23	<b>depict (1)</b>
81:14 101:20	115:23,24	136:4	45:10 94:2,3	18:4
102:6 103:18	116:5 118:3	<b>couple (1)</b>	<b>dates (1)</b>	<b>depicted (1)</b>
103:19	118:10 120:8	21:12	8:8	71:6
104:25 105:4	120:14,17	<b>course (7)</b>	<b>David (3)</b>	<b>depiction (1)</b>
106:11,13	127:22,23	60:7 118:14	4:4,10 40:25	89:6
<b>corners (1)</b>	128:7,11,19	119:2,19	<b>David@adha...</b>	<b>Depo (2)</b>
80:4	128:21	123:16	4:12	103:3 104:14
<b>correct (109)</b>	<b>correction (2)</b>	127:12	<b>DAVIDA (1)</b>	<b>deponent (1)</b>
6:13,14 7:2	60:13 90:12	131:18	1:10	111:3
13:23 15:25	<b>correlate (6)</b>	<b>court (7)</b>	<b>day (6)</b>	<b>deposition (8)</b>
16:2 24:24	52:11 58:20	1:2 5:12,15	35:17 44:14	6:2 20:3,13,18
26:3,4 30:18	59:9 60:4	41:16 122:18	69:21 85:6	20:24 27:23
30:21,22	61:22 75:21	122:22,22	133:17	49:16 108:22
43:12,18 44:5	<b>correlates (1)</b>	<b>coverage (1)</b>	136:22	<b>Deputy (1)</b>
44:24,25	60:8	23:16	<b>days (3)</b>	1:9
47:17 48:3,11	<b>correspond (1)</b>	<b>created (1)</b>	94:11,12	<b>derived (1)</b>
48:16 52:6,9	116:16	12:24	115:11	116:2
52:9 54:22	<b>corresponde...</b>	<b>cross (2)</b>	<b>deal (1)</b>	<b>describe (1)</b>

March 22, 2021

Page 141

12:16	106:10,13	80:22 81:14	100:2 102:21	65:20
<b>described (1)</b>	119:20,22	83:4,9,11,20	103:22	<b>Dot (1)</b>
116:10	<b>diagonals (1)</b>	83:21 96:7	127:21	108:4
<b>description (6)</b>	99:2	97:23 101:18	135:15	<b>dotted (3)</b>
48:8 50:17	<b>diagram (34)</b>	102:7,8 105:6	<b>documenting...</b>	70:15,17,19
65:15 120:24	52:19 57:2,6,8	105:10 112:3	35:24	<b>Doug (4)</b>
124:2 135:3	58:2,3,8,11	<b>dimensions (...)</b>	<b>documents (2...</b>	77:16 120:21
<b>descriptions ...</b>	59:9,12 69:4	13:6,6 15:8	5:6,10 19:5	121:4,8
51:6	69:6,13,25	19:13 51:21	30:2 36:23	<b>Douglas (11)</b>
<b>designation (2)</b>	71:7,12 77:8	52:22 53:18	37:23,25	77:16,18,19
41:12 94:17	77:13 79:9	58:14 60:8,19	38:11,13,19	78:3,8,18
<b>desire (3)</b>	80:13,18,19	70:21 74:16	38:25 39:3	81:8 120:19
22:3 23:18	81:7 85:18	80:6 81:9	42:2,5 45:15	120:22
45:22	88:17,18	85:23 97:4	45:18,21	123:12,14
<b>detail (18)</b>	89:16 102:24	106:19	99:12 128:5	<b>Dr (1)</b>
51:9,10 52:10	104:20	111:25	128:13	6:11
52:23 53:11	105:13	112:14	135:20	<b>drafting (2)</b>
57:19 60:5,6	106:17,21	<b>direct (1)</b>	<b>Doe (1)</b>	115:6,7
60:7 84:14	107:25	119:19	1:13	<b>draw (3)</b>
88:6,14,16,20	111:15	<b>disagree (1)</b>	<b>doggie (2)</b>	51:6 78:6
88:21,22	<b>diagrams (3)</b>	122:4	65:17,18	79:22
89:10 99:24	56:5 92:18	<b>Disclosure (1)</b>	<b>doing (1)</b>	<b>drawing (18)</b>
<b>determinatio...</b>	135:17	135:9	17:3	50:20 52:11,12
36:9	<b>diameter (4)</b>	<b>discrepancie...</b>	<b>donate (1)</b>	56:10 57:10
<b>determine (3)</b>	37:17 79:16	116:6,15	63:5	63:17 67:2,14
79:20 88:23	112:5 113:7	<b>discrepancy (...)</b>	<b>donating (1)</b>	79:22 83:9
125:11	<b>differ (1)</b>	89:20 101:3,16	63:6	85:6 89:8,22
<b>develop (1)</b>	101:11	102:3,4	<b>door (6)</b>	90:22,22,25
114:10	<b>difference (3)</b>	<b>discuss (4)</b>	12:24,25 13:3	93:8 97:6
<b>developed (1)</b>	23:12 96:14	49:15 108:24	13:4 121:18	<b>drawings (8)</b>
116:8	119:11	109:3,6	130:11	50:22,24 51:2
<b>diagonal (39)</b>	<b>differences (1)</b>	<b>discussed (1)</b>	<b>doors (2)</b>	61:23 62:9
16:7 52:15,17	90:22	57:5	31:8,10	101:25
52:20 53:3,22	<b>different (11)</b>	<b>discussions (1)</b>	<b>dormer (34)</b>	108:10
54:17 55:20	44:4,14 71:24	108:23	65:17,19,23	116:20
60:7 85:19,24	78:10 90:18	<b>DISTRICT (2)</b>	67:15,16,21	<b>drawn (2)</b>
86:15 87:2,11	90:19,19,24	1:2,2	68:2 69:5,6,7	89:4 105:14
87:23 89:17	94:6 96:22	<b>Divided (1)</b>	70:14,14,20	<b>drops (1)</b>
96:3,8 97:7	120:5	74:17	71:3,6,10,10	69:3
97:15,21,25	<b>difficulty (1)</b>	<b>document (23)</b>	71:14 73:17	<b>drove (1)</b>
98:6,11 99:24	118:12	42:22 43:19,25	75:9,23 81:4	35:6
100:3,25	<b>dimension (25)</b>	44:3,8,12,13	81:12 82:21	<b>duly (2)</b>
101:5,8,20	53:15 54:4	44:19,20,24	82:23,25 83:5	5:3 136:14
102:12 103:7	55:2,11 58:6	46:5 50:7,22	83:7,12,14,16	<b>duplicate (7)</b>
103:14	59:13 64:13	61:14 68:21	83:20,25 84:4	93:3,11 107:6
105:12,14	70:4,6 73:25	99:2,8,9	<b>dormers (1)</b>	107:8,12,20



107:25	83:11 128:12	<b>engineer (16)</b>	69:8 77:25	45:6 47:9
<b>duplicated (2)</b>	<b>electrical (5)</b>	7:13 9:6,8,15	118:10	48:18 49:21
93:17 107:16	17:17,19,21	23:19 24:6	<b>evaluate (1)</b>	59:20 61:9,15
<b>duplicates (1)</b>	18:4,9	74:4 115:15	119:4	76:5 84:18
107:5	<b>electricity (1)</b>	117:24 119:3	<b>evaluation (1)</b>	91:12,17,17
<b>duplication (1)</b>	18:7	122:3 123:11	29:16	93:21 102:19
106:20	<b>else's (1)</b>	127:14,17	<b>event (2)</b>	102:23
<b>duties (1)</b>	94:6	128:9 129:18	22:20 104:19	104:10,13
9:7	<b>email (12)</b>	<b>engineering (5)</b>	<b>eventually (1)</b>	107:11,12,19
	3:10,23 4:12	6:19 9:10	118:18	108:5 111:9
<b>E</b>	25:16,17,20	76:10 114:18	<b>exact (2)</b>	111:14
<b>E (9)</b>	26:5,21,24	128:2	8:8 61:25	112:22
3:2,2 4:2,2,2	27:3,10,12	<b>engineers (3)</b>	<b>exactly (2)</b>	114:10
4:17,17 5:2	<b>emailed (1)</b>	36:15 114:17	67:12 75:8	127:10
134:2	21:23	129:25	<b>examination ...</b>	<b>exhibits (7)</b>
<b>E-N-E-R-C-...</b>	<b>emails (4)</b>	<b>enlarge (5)</b>	2:3 6:9 111:11	20:13 41:3
114:9	26:8,11 28:3	50:10,12 53:2	114:6 119:20	115:7,18
<b>earlier (1)</b>	134:12	53:9 64:7	130:23,25	116:21 127:9
81:10	<b>embedded (4)</b>	<b>enlarged (1)</b>	131:3 132:17	135:2
<b>early (3)</b>	30:17 112:10	61:11	134:4 136:12	<b>expected (1)</b>
8:8 11:17	113:16,19	<b>enter (1)</b>	136:14	7:5
115:13	<b>Emily (13)</b>	127:7	<b>examine (1)</b>	<b>expert (10)</b>
<b>easily (1)</b>	41:8 45:4 53:8	<b>entire (2)</b>	119:4	22:16 121:15
71:4	68:23 74:9	81:23 123:23	<b>examined (6)</b>	122:11
<b>east (6)</b>	82:18 93:14	<b>envelope (2)</b>	5:4 117:15,25	124:23,24
4:7 83:17	95:20 99:14	69:17,18	123:21	125:10,25
123:18,23	104:2 107:10	<b>environment...</b>	128:23 131:4	130:4 131:9
124:6 126:12	136:6,24	127:8	<b>example (1)</b>	135:9
<b>EASTERN (1)</b>	<b>Empire (1)</b>	<b>Eptosca@kr...</b>	101:16	<b>exposed (1)</b>
1:2	135:15	3:23	<b>exception (2)</b>	112:13
<b>eaves (2)</b>	<b>employed (4)</b>	<b>equate (1)</b>	20:12 108:2	<b>extend (8)</b>
14:24 15:2	8:20,22 76:10	74:20	<b>exchange (3)</b>	96:2 102:12
<b>edge (5)</b>	76:12	<b>equivalent (1)</b>	25:8 27:3,12	103:7 106:5
55:14 102:13	<b>empty (1)</b>	72:13	<b>exchanged (4)</b>	106:11,11,13
104:21 106:6	17:15	<b>Eric (4)</b>	20:23 25:11	117:11
106:12	<b>enclosed (2)</b>	3:21 40:19	27:10 38:11	<b>extended (1)</b>
<b>education (1)</b>	69:17,18	46:4 55:11	<b>exchanges (3)</b>	103:14
6:17	<b>endured (1)</b>	<b>Esq (6)</b>	26:5,21,25	<b>extending (1)</b>
<b>effort (1)</b>	127:6	1:11 3:8,12,21	<b>Excuse (1)</b>	105:3
21:19	<b>ENERCALC...</b>	4:10,18	19:22	<b>extends (6)</b>
<b>egress (2)</b>	46:2,3 114:9	<b>estimate (3)</b>	<b>exemplars (2)</b>	55:13 57:14
31:7 118:19	114:13,24	68:25 79:4	113:11,13	71:4,14
<b>eight (2)</b>	<b>energy (1)</b>	119:9	<b>exhibit (33)</b>	104:24 105:8
8:19 105:23	126:20	<b>estimated (1)</b>	5:5 20:6,8	<b>extension (1)</b>
<b>either (5)</b>	<b>engine (1)</b>	79:6	41:12 42:10	83:7
64:11,13 66:3	8:25	<b>estimation (3)</b>	42:20 43:20	<b>extensive (1)</b>

124:10	120:22 121:7	1:10	108:18	<b>forward (1)</b>
<b>extent (3)</b>	123:20	<b>felt (4)</b>	123:21	41:19
22:16 60:9	124:12	32:11,12 33:11	136:13	<b>foundation (2)</b>
83:12	126:11	98:23	<b>five (3)</b>	40:17,20
<b>exterior (7)</b>	127:20,25	<b>field (7)</b>	11:11 125:24	<b>four (9)</b>
14:21 55:6	<b>familiarity (1)</b>	61:17 90:24	135:6	11:11 15:12,25
60:8 66:2	36:10	92:13,14	<b>fixtures (1)</b>	16:12 80:5
96:15 102:5	<b>Family (1)</b>	116:8,22,24	129:7	81:15 113:8,9
103:15	37:12	<b>Fifteen (2)</b>	<b>floor (31)</b>	135:10
<b>external (1)</b>	<b>fastened (1)</b>	63:25 99:20	16:8,15 47:16	<b>fraction (1)</b>
53:18	55:3	<b>figure (2)</b>	47:21,23 48:7	72:15
<b>extreme (5)</b>	<b>father (8)</b>	72:21 73:11	48:8,10,15,21	<b>frame (1)</b>
55:5 96:8,9	33:24 118:15	<b>figuring (1)</b>	56:19 57:7,10	35:2
99:4 102:6	124:20 125:2	101:23	58:17 59:23	<b>framing (9)</b>
<b>eyeballed (1)</b>	125:8,12	<b>FILE (1)</b>	60:3,11,18,20	16:14 54:22
52:4	126:3,8	3:24	72:7 82:20,22	55:12 71:2,2
<b>F</b>	<b>fathered (1)</b>	<b>filed (1)</b>	82:24 83:2,2	71:4 72:25
<b>face-to-face (1)</b>	125:4	109:4	83:4,6 95:25	104:25
101:10	<b>favor (1)</b>	<b>Fillmore (1)</b>	117:6 120:3	105:19
<b>fact (8)</b>	25:6	4:18	120:13	<b>Francis (1)</b>
22:15 23:5	<b>feel (8)</b>	<b>finalized (1)</b>	<b>flooring (1)</b>	5:17
31:5 120:6	31:25 32:4,8	5:22	47:13	<b>frankly (1)</b>
122:13	32:14,21,23	<b>finding (1)</b>	<b>Florida (4)</b>	58:14
123:20 124:4	33:7 125:23	101:8	7:14,17 8:4,5	<b>furnished (1)</b>
126:11	<b>feeling (1)</b>	<b>findings (1)</b>	<b>focused (1)</b>	44:20
<b>factors (1)</b>	75:8	29:15	18:6	<b>further (6)</b>
90:5	<b>feelings (4)</b>	<b>fine (4)</b>	<b>follow (2)</b>	41:11 56:14
<b>facts (1)</b>	22:4,13,24	57:23 74:2,6	26:19 28:22	59:17 132:14
22:18	23:4	84:22	<b>follows (1)</b>	133:6 136:16
<b>factually (1)</b>	<b>feet (43)</b>	<b>finish (2)</b>	5:4	<b>future (2)</b>
35:16	12:20 13:7,7,9	94:9 118:5	<b>foot (12)</b>	127:2 132:21
<b>failure (1)</b>	13:9 40:9	<b>finished (3)</b>	53:16,20 59:14	<b>G</b>
30:5	60:22,22 62:2	111:3 116:20	67:12,25 69:2	<b>Gallagher-M...</b>
<b>fair (6)</b>	63:19,23 64:5	118:6	70:7 71:23	136:6,24
66:8 79:7,14	64:10,17,18	<b>Fir (15)</b>	72:13 80:25	<b>general (1)</b>
80:9 96:13	66:11,14,23	77:16,17,18,19	101:14,14	110:2
116:21	67:8 68:4,6,9	78:3,8,19	<b>forestry (4)</b>	<b>generally (1)</b>
<b>fairly (2)</b>	69:25 71:23	81:8 120:19	37:3,6,14,15	125:8
79:8 98:23	72:2,10,12,12	120:21,23	<b>Forgive (1)</b>	<b>generated (2)</b>
<b>fall (2)</b>	72:18,20,24	121:4,8	74:2	48:24 49:7
11:16 130:18	74:13,17	123:12,14	<b>Form (1)</b>	<b>Georgia (5)</b>
<b>familiar (14)</b>	75:16,18 96:5	<b>firm (1)</b>	135:5	7:14,17 8:6,7
10:11 36:3,6	97:10,18,20	76:10	<b>format (2)</b>	10:3
36:13 65:16	98:13,14 99:5	<b>first (7)</b>	25:9,10	<b>GERARD (1)</b>
114:20 119:8	101:14	8:16 21:10	<b>forth (1)</b>	1:11
	<b>FELLMAN (1)</b>	64:25 95:4	136:13	



March 22, 2021

Page 144

<b>getting (5)</b> 18:18 27:18,18 99:6 118:13	49:20 57:25 58:16 62:22 63:5 93:20	61:16 73:10 89:6 136:22	59:4 69:2 81:23 82:12 84:24 85:19	80:11 83:3,6 85:10,12,15 91:25 92:5
<b>give (10)</b> 13:5 27:22 44:9 62:22 89:25 90:2,4 98:18 107:23 109:22	101:19 111:15 118:25 121:15 131:9 131:24,25 132:25	<b>handwriting ...</b> 47:11 <b>handwritten ...</b> 49:6,8,10 60:10 61:22 62:11 88:17 89:4 135:17	85:25,25 86:18 87:3,24 101:7 103:15 <b>house (141)</b> 11:3,22,25 12:7,20 13:13 13:16,17 14:4 14:19,21,22 15:5,11,14,21 16:4,8,25 17:3,8,10,18 17:20 18:2,12 18:19 19:11 19:15 21:11 21:13 22:5 23:16,18 24:12,20 25:24 27:20 29:19 30:4,6 30:9,24 31:14 31:20 32:2,6 32:10,25 33:8 33:17,19 34:14,18,20 34:24 35:9,14 35:20,22 36:19 37:21 39:7,16,19,25 40:2,5,8,11 40:13,22 47:16 48:10 48:15,21 56:2 57:16 58:15 58:24 61:17 62:15,19 63:12 64:18 65:21 69:16 69:19,22,25 70:13,25 71:11 72:21 73:2,11 75:11 76:19 77:7,22 78:9 79:5	95:16 96:11 100:7 105:15 106:19 109:12,23 110:13,17 111:22 115:23 116:3 116:23 117:8 117:12,16 118:13,20,25 120:10 121:11 123:10,13,21 124:17 126:3 126:24 128:23 129:20 132:20,22 <b>houses (7)</b> 39:2,5,13,23 123:15 128:14,17 <b>hurricanes (1)</b> 126:14
<b>given (2)</b> 38:8 136:16	<b>good (3)</b> 19:9 79:8 115:11	<b>hang (2)</b> 14:24 15:3		
<b>giving (1)</b> 27:23	<b>Google (5)</b> 8:23,24 9:5,10 92:6	<b>happens (1)</b> 121:25		
<b>GLASS (1)</b> 1:11		<b>hard (1)</b> 29:3		
<b>globally (3)</b> 9:11,12,13	<b>grabbing (1)</b> 107:17	<b>heading (1)</b> 95:21		
<b>go (43)</b> 8:24 11:21 35:6 41:11 42:19 46:8,17 46:19 48:4,12 48:17 49:18 53:10 56:14 57:2,24 59:15 59:17 63:17 64:24 66:14 66:18,20 70:22 76:15 82:14,16 84:17 88:5 90:10 95:19 100:22 102:3 102:9 106:14 106:24 107:3 107:19 108:21 113:24 130:7 130:8 132:12	<b>graduation (1)</b> 7:6 <b>grandchildre...</b> 125:24 <b>graphics (1)</b> 116:8 <b>Great (2)</b> 4:8 6:15 <b>ground (1)</b> 34:3 <b>guardians (1)</b> 1:4 <b>guess (7)</b> 15:4 17:5 63:4 66:12 71:11 82:20 85:14 <b>guy (3)</b> 22:3 23:25 91:22	<b>height (5)</b> 34:2 68:5 84:11,14,24 <b>held (2)</b> 2:4 85:25 <b>help (7)</b> 21:24,25 22:3 23:18,25 24:2 24:4 <b>helping (2)</b> 33:22 34:15 <b>hereinbefore ...</b> 136:13 <b>hereunto (1)</b> 136:22 <b>high (1)</b> 126:14 <b>highest (1)</b> 6:16 <b>hold (4)</b> 7:8,12 64:6 89:14 <b>holding (2)</b> 18:16 19:20 <b>home (3)</b> 35:5 92:7,8 <b>horizontal (18)</b> 54:16,20 55:17 56:17 57:17		
<b>going (29)</b> 6:24 19:3,5,25 20:17,22,23 22:20 25:8 26:10 27:22 28:19 31:8 33:7 35:19	<b>H</b> <b>H (2)</b> 3:4,8 <b>habitation (1)</b> 130:2 <b>hammocks (1)</b> 17:12 <b>hand (6)</b> 47:10 50:4			
				<b>I</b> <b>IBC (3)</b> 36:20 37:9,19 <b>ID (1)</b> 44:9 <b>idea (1)</b> 98:22 <b>identical (2)</b> 43:20 44:13 <b>identification ..</b> 5:7 <b>identified (2)</b> 107:5 122:13 <b>identify (2)</b> 56:15 67:14 <b>images (1)</b> 59:19 <b>immediately ...</b>

March 22, 2021

Page 145

116:3	128:6	15:13 17:7,9	63:10	62:1 63:1
<b>inch (7)</b>	<b>incorrect (3)</b>	34:21,22	<b>interrupt (1)</b>	64:1 65:1
72:25 74:20	6:12 25:3 68:6	58:15,23,25	54:7	66:1 67:1
80:21 83:11	<b>Index (1)</b>	59:2 70:4,6	<b>investigation...</b>	68:1 69:1
103:21,22	1:16	70:12,13,14	14:15	70:1 71:1
112:5	<b>indicate (5)</b>	70:21,24 71:2	<b>involved (1)</b>	72:1 73:1
<b>inches (80)</b>	20:4 29:17	71:18 72:21	39:21	74:1 75:1
60:23,24 63:22	70:18 98:10	72:25 79:20	<b>involving (1)</b>	76:1 77:1
63:25 64:5,19	109:11	80:4 81:10	114:17	78:1 79:1
64:19,20	<b>indicated (11)</b>	83:4,21 85:9	<b>Island (2)</b>	80:1 81:1
65:23 66:12	45:8 58:11	100:7 106:19	123:24 124:6	82:1 83:1
66:15,21,21	59:10 61:14	<b>inspected (5)</b>	<b>issue (2)</b>	84:1 85:1
66:23 67:8,11	77:7 84:12	39:8,12 51:25	35:18 122:17	86:1 87:1
68:3,7 69:3	115:4 120:20	55:22 69:22	<b>items (3)</b>	88:1 89:1
70:2,7 72:3	127:19,24	<b>inspection (4)</b>	17:9 31:13	90:1 91:1
72:12 73:9,13	128:4	34:25 40:14	38:6	92:1 93:1
73:21 74:19	<b>indicates (1)</b>	86:9 112:15	<b>J</b>	94:1 95:1
75:4,5,15,19	48:7	<b>inspections (1)</b>	<b>J (129)</b>	96:1 97:1
79:13,24 80:2	<b>indication (3)</b>	39:4	5:2 6:1 7:1 8:1	98:1 99:1
81:21,22	82:10 128:22	<b>Inspector (1)</b>	9:1 10:1 11:1	100:1 101:1
83:10,14,18	129:17	1:11	12:1 13:1	102:1 103:1
84:2,9,23	<b>Indiscernible...</b>	<b>instance (1)</b>	14:1 15:1	104:1 105:1
85:2 86:13,13	78:16	116:17	16:1 17:1	106:1 107:1
86:22 87:3,3	<b>individual (2)</b>	<b>instant (1)</b>	18:1 19:1	108:1 109:1
87:11,13,19	47:23 62:4	39:22	20:1 21:1	110:1 111:1
87:20 88:2	<b>individually ...</b>	<b>Institute (2)</b>	22:1 23:1	112:1 113:1
89:18,18	1:4,13	6:21 7:4	24:1 25:1	114:1 115:1
97:20 98:16	<b>infant (1)</b>	<b>intend (1)</b>	26:1 27:1	116:1 117:1
99:3,4,6,24	1:4	21:4	28:1 29:1	118:1 119:1
100:3,20,23	<b>information (...)</b>	<b>intended (3)</b>	30:1 31:1	120:1 121:1
101:3,7,7,12	13:24 28:11	126:4 129:19	32:1 33:1	122:1 123:1
101:13	50:15,17	130:2	34:1 35:1	124:1 125:1
102:17,17,25	126:19	<b>intention (2)</b>	36:1 37:1	126:1 127:1
103:6,10,13	<b>informed (1)</b>	128:24 132:21	38:1 39:1	128:1 129:1
104:19 105:6	117:20	<b>interested (1)</b>	40:1 41:1	130:1 131:1
105:10,13	<b>ingress (1)</b>	136:19	42:1 43:1	132:1 133:1
112:6	118:19	<b>interior (6)</b>	44:1 45:1	<b>J.B (1)</b>
<b>included (1)</b>	<b>initial (1)</b>	14:23 18:2	46:1 47:1	93:24
116:21	94:6	58:14,23	48:1 49:1	<b>Jacob (1)</b>
<b>incomplete (4)</b>	<b>initials (3)</b>	79:17 80:11	50:1 51:1	93:22
31:4 33:10	93:24 94:5,22	<b>international...</b>	52:1 53:1	<b>Jacobs (3)</b>
124:17	<b>INSERT (1)</b>	36:14 37:9	54:1 55:1	76:6,8,9
126:24	134:15	127:21	56:1 57:1	<b>James (7)</b>
<b>Incorporated...</b>	<b>inside (32)</b>	129:23 131:5	58:1 59:1	2:4 4:6 5:14
46:3	11:24 12:21	<b>Internet (4)</b>	60:1 61:1	133:13 134:5
<b>incorporates ...</b>	14:19 15:11	8:25 50:3 63:5		135:12



136:10	38:4 41:22	<b>larger (1)</b>	25:20 26:6,16	70:15,17,19
<b>Jane (1)</b>	62:14 63:2	105:25	26:22,25	71:8,10 72:15
1:13	65:18 66:5	<b>Laser (1)</b>	27:11,12 29:4	74:16 83:8
<b>Jersey (6)</b>	67:9,9,18,18	135:11	29:4 31:12	<b>lines (1)</b>
5:18 6:21 7:4	68:11 72:11	<b>late (2)</b>	44:20 78:12	83:10
7:14 8:2	73:22 74:3	11:16 115:13	85:7 108:13	<b>literal (1)</b>
123:17	75:2,4,7	<b>LAW (2)</b>	108:16,21,24	94:25
<b>job (1)</b>	76:24 77:2	3:4 4:4	112:6,16	<b>litigation (3)</b>
118:5	90:3,3 91:6	<b>lawsuit (3)</b>	113:19	35:15 39:22,22
<b>John (5)</b>	98:18,19,23	108:13,16,19	117:21	<b>little (5)</b>
1:4,13 3:12	98:24 102:20	<b>lawyers (1)</b>	118:23	53:9 76:16
16:19 135:13	113:6 128:8	28:11	120:20	89:25 90:4
<b>Joseph (2)</b>	<b>knowledge (2)</b>	<b>layman (5)</b>	132:20	102:7
38:2,4	22:17 29:11	124:20 126:2	135:13	<b>live (3)</b>
<b>JR (1)</b>	<b>known (1)</b>	126:17 127:2	<b>Lepper's (2)</b>	128:20,24
3:12	131:23	129:19	26:13 27:24	129:19
<b>judge (1)</b>		<b>layout (4)</b>	<b>Lepper-Bro...</b>	<b>lived (1)</b>
123:2	<b>L</b>	85:6 98:25	102:23 103:3	110:2
<b>judgment (1)</b>	<b>L (1)</b>	99:9 135:15	104:14	<b>living (2)</b>
33:13	4:17	<b>layperson (3)</b>	<b>let's (10)</b>	35:17 123:17
<b>junction (4)</b>	<b>L-E-E-D (1)</b>	121:23,25	8:10 17:8	<b>LLP (1)</b>
17:22,24 18:5	9:17	122:2	46:17 56:25	3:17
18:9	<b>lack (3)</b>	<b>learn (2)</b>	59:24 66:18	<b>located (5)</b>
	31:20 50:5	21:10,14	67:13 122:17	9:3 11:3 39:25
<b>K</b>	65:17	<b>leave (1)</b>	122:19,24	40:2 86:18
<b>keep (2)</b>	<b>ladder (23)</b>	133:2	<b>letter (3)</b>	<b>location (5)</b>
89:13 125:19	12:3,6,8,10,11	<b>LEED (2)</b>	29:4 135:7,12	10:14 80:4
<b>Kelly (4)</b>	12:15,17,22	9:17,19	<b>letters (2)</b>	110:2 116:18
3:17,17 4:19	18:19 31:6	<b>left (11)</b>	28:20 134:13	116:19
4:19	32:2,5,9,12	50:11 52:14	<b>level (1)</b>	<b>loft (1)</b>
<b>KEVIN (1)</b>	32:15,24 33:9	58:24 59:18	6:17	129:15
1:9	33:12,16,20	69:24 71:11	<b>Lexitas-Lega...</b>	<b>long (9)</b>
<b>kind (9)</b>	33:23 85:14	71:21 80:13	1:18	10:4 30:16
13:22 14:3	118:13	81:7 82:23	<b>license (3)</b>	34:20 45:12
50:16 107:3	<b>lag (14)</b>	103:19	7:22,24 122:2	87:13 95:15
118:19	111:15,18,19	<b>leg (2)</b>	<b>licensed (1)</b>	115:3 123:23
119:23,23	111:24 112:3	95:22,24	128:9	124:6
122:7 127:7	112:6,9,19,24	<b>length (10)</b>	<b>licenses (4)</b>	<b>longer (3)</b>
<b>kitchen (1)</b>	113:7,8,12,14	30:20 53:22	7:9,11 9:14,16	76:12 106:10
129:12	113:16	80:5 81:24	<b>life (1)</b>	106:12
<b>know (41)</b>	<b>Lane (1)</b>	97:18,20	123:16	<b>longhand (1)</b>
5:23 8:7 20:22	5:17	100:25 101:8	<b>lifetime (1)</b>	115:18
22:12 23:6	<b>language (1)</b>	104:20 120:5	125:4	<b>LONGO (1)</b>
27:21,21	65:18	<b>Lepper (31)</b>	<b>limited (1)</b>	1:12
30:13 31:7,22	<b>large (1)</b>	1:4,4 12:7	122:16	<b>look (14)</b>
32:17 35:20	111:19	16:19,24 17:5	<b>line (8)</b>	25:24 30:24

March 22, 2021

Page 147

40:12 41:9	<b>March (3)</b>	94:23 112:24	46:25 47:3,4	96:3 97:7
46:10 49:21	1:19 45:11	<b>meaning (2)</b>	47:22,25	104:23 105:3
60:3 79:9	136:22	60:22 74:3	51:17 52:18	105:7,19
85:5,17 91:16	<b>mark (2)</b>	<b>meaningless ...</b>	55:19 56:11	<b>members (8)</b>
93:6,21	20:21 21:3	44:10	58:10,12,13	16:12,15 56:16
113:15	<b>marked (10)</b>	<b>means (8)</b>	58:18,20	56:18 105:17
<b>looked (10)</b>	5:7,10 20:7,13	51:24 83:23	61:18,21,22	105:21
30:9 37:13,20	20:15,18,24	84:9 94:10,19	61:23 62:2,3	119:21,22
52:5 61:24	21:7 41:17	118:19	62:10 63:19	<b>memory (2)</b>
79:7 84:15	53:14	120:12	65:16,22	62:7,10
88:18 106:17	<b>markings (1)</b>	126:18	66:21,23	<b>mention (4)</b>
106:21	20:20	<b>measure (13)</b>	67:22 69:20	65:8 109:25
<b>looking (15)</b>	<b>marriage (1)</b>	11:19,20 14:10	70:22 71:17	132:21,25
8:11 42:2 53:6	136:18	15:7,21 16:4	71:20 74:21	<b>mentioned (4)</b>
54:16 62:24	<b>MARY (1)</b>	34:5 52:4	75:23,24	38:6 68:15
63:10 69:13	1:10	55:23 64:18	76:17 79:10	104:4 114:8
88:8,10 89:22	<b>mass (1)</b>	70:24 73:3	79:18,19,21	<b>middle (1)</b>
98:17 99:19	126:18	74:20	79:21 80:8,18	80:22
99:23 100:2	<b>Master (1)</b>	<b>measured (14)</b>	81:2,3,5	<b>mind (1)</b>
101:25	6:18	14:12,14 15:13	85:14 86:7	89:14
<b>looks (7)</b>	<b>master's (1)</b>	15:14,17 16:6	90:20 92:16	<b>Mincola (1)</b>
53:6 68:8 70:7	6:22	16:10,11	92:18 98:10	3:20
72:10 73:23	<b>material (13)</b>	51:24 81:10	98:21,25	<b>minutes (1)</b>
79:11 103:7	13:14,18 14:3	91:3 96:10	100:12	34:22
<b>love (2)</b>	115:6,17	99:3 100:9	102:18	<b>moment (1)</b>
110:19,21	116:2 120:19	<b>measuremen...</b>	116:23	88:5
<b>lower (4)</b>	120:25 121:4	54:25 55:18,24	<b>measurer (1)</b>	<b>money (1)</b>
59:12 89:23	121:10,12	58:7 59:8	14:10	63:5
99:17 103:19	123:12,15	60:5 61:2,3	<b>measures (1)</b>	<b>month (2)</b>
<b>lowest (2)</b>	<b>materials (2)</b>	63:22 64:2,20	83:14	11:15 43:17
130:19,20	116:7 120:23	67:10 70:10	<b>measuring (4)</b>	<b>Morris (20)</b>
<b>M</b>	<b>matter (2)</b>	72:6 73:7	34:13 83:4	3:4,8 38:15
<b>M (1)</b>	35:14 136:20	74:23 80:10	87:11 119:14	41:24 53:12
5:2	<b>matters (1)</b>	81:23 86:17	<b>media (4)</b>	54:6 103:2
<b>Madam (3)</b>	127:11	88:3 90:7	21:16 24:8,9	104:12 111:2
21:2 122:6	<b>Mayor (3)</b>	91:6 96:5,6	126:18	113:21
123:4	1:9,9,10	96:14,16,18	<b>meet (2)</b>	120:15
<b>mail (1)</b>	<b>mean (18)</b>	97:14,25 98:5	110:10 131:4	122:15
25:11	9:18 11:8	98:8 103:6	<b>Melville (1)</b>	125:19
<b>main (1)</b>	22:10 23:2	112:15	3:7	130:10
91:2	27:18 47:15	<b>measuremen...</b>	<b>member (20)</b>	131:12,17,18
<b>making (1)</b>	51:23 53:17	10:23 11:2,18	54:2,4,22	131:21 132:7
36:9	62:17 65:2	14:9 16:18	55:12,21	133:4
<b>male (1)</b>	68:18 72:4	17:3 30:13	57:14,17,20	<b>motivated (1)</b>
125:11	82:25 83:24	33:25 34:8,24	85:19,19 87:2	23:21
	84:6 90:18	35:24 46:24	87:23,24 90:2	<b>move (1)</b>



131:14	<b>news (9)</b>	64:25 65:4	132:9,11	6:3,5,15 7:8
<b>MULDOWN...</b>	21:15,16,21	66:14,19	<b>objections (1)</b>	9:23 10:20
1:9	23:7,16 24:7	72:20 75:14	125:20	11:5,12 12:15
<b>multiple (3)</b>	24:9 25:17,21	79:11 81:20	<b>observations ...</b>	13:5,9,12
5:9 54:8,11	<b>nine (1)</b>	84:21 86:21	116:22	14:16 15:4,10
<b>N</b>	12:20	87:6 89:23	<b>observe (5)</b>	18:8 19:3,10
<b>N (7)</b>	<b>Nineteen (1)</b>	97:7 99:10	17:7,9 30:8	19:19 23:11
3:2 4:2,2,2,17	135:21	102:23 104:7	112:8 123:18	23:21 25:4,13
5:2 134:2	<b>Noelle (2)</b>	107:23,25	<b>observed (1)</b>	26:10,24
<b>Nailed (1)</b>	1:4 26:25	111:14 113:6	30:24	28:12,17 29:7
12:4	<b>nominal (1)</b>	123:22	<b>obtain (3)</b>	29:10 30:23
<b>nails (5)</b>	85:23	127:10	7:22,24 10:2	31:19 32:14
19:20 30:8,14	<b>non-party (4)</b>	<b>numbers (10)</b>	<b>Obviously (1)</b>	33:15 39:11
30:21 111:19	2:4 4:5 5:2,25	52:15,17 71:25	74:23	40:5 41:7,22
<b>name (5)</b>	<b>NONE- (2)</b>	74:12 75:14	<b>occasion (2)</b>	43:16,24 44:3
5:13 50:19	134:16,19	75:17,20	119:4 123:17	44:6,11,22
59:21 94:6,9	<b>north (2)</b>	80:14 101:4	<b>occupy (1)</b>	45:2,7,12
<b>names (2)</b>	83:13 105:8	114:10	128:19	47:4 49:15
59:24,25	<b>Notary (4)</b>	<b>O</b>	<b>ocean (3)</b>	50:4,24 51:17
<b>NASSAU (1)</b>	2:7 5:3 133:19	<b>O (3)</b>	63:3,7 108:3	52:17 54:3,24
136:4	136:7	4:2,17 5:2	<b>Ocean.com (1)</b>	55:6,13 56:3
<b>natural (1)</b>	<b>note (2)</b>	<b>object (10)</b>	108:7	57:22 59:3
1:4	116:17 122:9	20:19,23 23:2	<b>off-the-recor...</b>	60:24 61:13
<b>Neck (1)</b>	<b>notes (13)</b>	23:3 121:15	38:17 41:14	62:8,20 63:11
4:8	21:3 49:10	122:14	42:17 46:15	63:16,21
<b>need (3)</b>	62:11 68:14	131:13,20,22	50:13 99:15	65:12,22
21:24 61:10	90:24 91:8	132:2	111:6	66:12,22,25
91:16	92:13,14,21	<b>objecting (2)</b>	<b>offer (1)</b>	67:24 68:11
<b>needed (10)</b>	92:22 98:9	125:18 131:16	24:14	68:18 70:17
23:19 24:2,3,5	101:22 116:8	<b>objection (29)</b>	<b>offered (3)</b>	71:9,20,24
27:22 29:10	<b>notice (1)</b>	13:15 19:16	21:20 38:2	72:20 73:19
29:14,18	30:5	22:6 31:21	42:23	74:2,6,7,21
31:13 108:21	<b>noticed (1)</b>	35:13 116:13	<b>office (7)</b>	75:2,13,20,25
<b>neighbors (2)</b>	116:7	117:18 118:8	4:4 26:19 42:6	76:12,21 78:3
110:8,10	<b>notified (1)</b>	118:21 119:7	92:6,7,8 95:8	79:14 82:24
<b>new (24)</b>	108:21	119:16	<b>OFFICES (1)</b>	84:8,20 85:13
1:2 2:7 3:7,20	<b>notifying (1)</b>	121:13	3:4	85:17,21
4:8 5:18 6:21	27:21	122:16	<b>official (1)</b>	86:17 87:12
7:4,13,14,23	<b>November (1)</b>	123:25	1:13	87:20 88:16
7:24 8:2 9:4	11:17	124:22	<b>oh (11)</b>	88:24 89:9
10:12 36:18	<b>number (33)</b>	125:13,21	62:20 63:3,8	90:17 91:18
36:20 43:8	20:6,8,10	126:5,7,22	65:12 66:17	94:11 95:14
88:23 123:17	42:21 43:20	127:4 129:2	74:2 78:17	96:10 97:24
128:5,9 136:3	45:5 48:18	129:21 130:3	84:8 95:14	99:13,23
136:8	49:21 50:20	131:6,8,23	97:24 106:22	100:7 101:9
	53:4 56:6		<b>okay (130)</b>	101:15

103:20	129:18	<b>pad (1)</b>	<b>panels (1)</b>	<b>people (1)</b>
104:19 107:7	<b>orientation (2)</b>	76:11	47:23	125:8
107:22	77:10 83:15	<b>page (73)</b>	<b>paper (1)</b>	<b>perform (10)</b>
108:23	<b>original (1)</b>	42:11 45:4,8	107:17	10:23 11:2
109:20,21	45:13	47:8 48:12,18	<b>parallel (2)</b>	14:3 18:8,11
110:12,22	<b>originally (1)</b>	49:19 52:12	117:3,4	35:11 40:13
112:8,18	43:15	53:14,14 56:5	<b>parent (2)</b>	40:16 48:23
113:8,18	<b>outcome (1)</b>	59:20 62:24	125:11,11	49:3
124:3 130:13	136:19	62:25 67:7,15	<b>parents (1)</b>	<b>performed (5)</b>
<b>old (4)</b>	<b>outer (3)</b>	69:14 73:13	1:4	38:8 46:21
3:19 79:2,4	104:21,25	74:10 76:3,4	<b>part (19)</b>	48:20 49:12
115:11	106:6	76:5 81:17	10:25 14:21	119:22
<b>once (4)</b>	<b>outermost (1)</b>	82:15,17,17	15:21,24	<b>performing (2)</b>
10:17,19,20	103:18	85:4 88:6,8,9	20:17 30:5	34:12 35:23
121:19	<b>outlets (1)</b>	88:10,11,11	48:24 50:6	<b>perimeter (1)</b>
<b>open (2)</b>	17:21	89:14,14	52:20 54:21	103:18
31:9 130:11	<b>outside (13)</b>	90:11 91:11	55:6 60:14	<b>period (1)</b>
<b>opened (1)</b>	14:20 15:20,25	92:17 93:2,3	65:18 75:22	15:12
121:18	55:12,12,15	93:4,6,11,11	78:23 79:17	<b>permanent (1)</b>
<b>opening (22)</b>	59:14 80:10	93:12,21,21	89:8 94:22	118:18
12:23,24,25	83:19 85:23	95:9,16,20,21	96:19	<b>Permit (1)</b>
13:2,2,3,4	96:11,18	99:10,19,23	<b>particular (3)</b>	135:5
68:2 80:7	105:9	102:19,20	83:12 85:11	<b>perpendicula...</b>
81:11,12,13	<b>overall (2)</b>	104:16,17	117:8	117:5,7 120:12
81:13 83:15	97:18,20	105:8,13	<b>particularly (...)</b>	<b>person (1)</b>
83:19,21,23	<b>overhang (9)</b>	106:15,24	123:23	118:4
83:24 84:4,11	64:12,13,22,24	107:9,11,12	<b>parties (1)</b>	<b>personal (3)</b>
84:12,25	65:2,8,9,13	107:19,23	136:18	17:9 23:23,24
<b>openings (1)</b>	73:15	108:5 112:21	<b>parts (5)</b>	<b>pertinent (1)</b>
80:5	<b>oversee (1)</b>	134:4 135:3	14:11 16:3	14:15
<b>opinion (13)</b>	9:9	135:13,16	19:14,17 79:7	<b>Ph.D (1)</b>
23:7,17 24:10	<b>owned (1)</b>	<b>pages (11)</b>	<b>pass (1)</b>	6:24
121:20,22	39:16	42:9 46:19,20	129:14	<b>phone (1)</b>
122:11	<b>owner (1)</b>	114:11 127:9	<b>passes (1)</b>	25:12
124:20 126:9	120:20	135:6,8,10,11	120:10	<b>photo (1)</b>
126:23 127:5		135:18,21	<b>patent (1)</b>	49:24
130:4 131:9	<b>P</b>	<b>paid (1)</b>	133:2	<b>photograph (3)</b>
131:11	<b>P (6)</b>	24:17	<b>pause (1)</b>	52:18,19 65:3
<b>opinions (2)</b>	3:2,2,21 4:2,2	<b>pan (11)</b>	42:12	<b>photographs ...</b>
23:15 121:14	4:17	50:8,11,12	<b>PDF (4)</b>	11:5,7,10
<b>opposed (1)</b>	<b>P-L-U-M-B (1)</b>	59:11 68:19	42:9,9,11	17:25 18:21
98:14	120:16	68:21,21,23	59:20	18:24 19:6,7
<b>order (4)</b>	<b>P.E (1)</b>	99:12,14	<b>PDG/EPT/C...</b>	19:11 20:2,7
20:9 31:16	135:9	103:25	3:24	20:20 21:6
33:4 117:21	<b>p.m (1)</b>	<b>panel (2)</b>	<b>Pennsylvania...</b>	38:21 62:22
<b>ordinary (1)</b>	133:9	60:25 61:2	7:14 8:15,18	101:5 134:10



135:11	<b>Planning (1)</b>	<b>points (1)</b>	97:16	116:9
<b>photos (2)</b>	1:12	83:8	<b>previously (2)</b>	<b>Project (1)</b>
24:24,25	<b>plans (3)</b>	<b>poorly (1)</b>	78:24 106:17	95:10
<b>physical (3)</b>	23:20 24:6	126:21	<b>printing (2)</b>	<b>prompted (2)</b>
130:22,24	109:3	<b>portion (10)</b>	107:18,18	22:2 49:13
131:3	<b>plate (5)</b>	16:2 47:10	<b>prior (2)</b>	<b>property (4)</b>
<b>physically (2)</b>	82:22,24 83:2	63:18 65:11	5:21 21:12	24:12 50:20
40:18 117:15	83:4,6	67:4,5 87:25	<b>probably (13)</b>	124:10
<b>picture (7)</b>	<b>platform (31)</b>	98:17 103:15	8:8 12:20	126:13
49:22,24 51:11	15:5,7,22,24	123:6	21:12 27:13	<b>proved (1)</b>
88:25 104:8	34:2 51:16	<b>position (1)</b>	72:17 87:10	90:2
105:2 107:24	52:16 54:21	9:5	90:25 93:7	<b>provide (8)</b>
<b>pictures (8)</b>	54:23 55:7,14	<b>possibly (5)</b>	95:17 97:12	19:4,6,8 24:6
62:13,13,16,17	70:5 80:10,22	26:23 64:22	105:7 107:18	29:21,25 44:2
62:18,21	80:23 87:25	101:10,17,17	108:20	49:9
89:23 124:12	95:25 96:19	<b>pots (1)</b>	<b>problem (1)</b>	<b>provided (2)</b>
<b>piece (3)</b>	100:13	17:12	118:16	29:5,7
55:20 96:15,18	102:13	<b>pounds (1)</b>	<b>proceed (2)</b>	<b>providing (1)</b>
<b>Pinelawn (1)</b>	104:22,25	97:9	6:6 122:24	45:21
3:6	105:20,22	<b>premises (3)</b>	<b>proceedings (...)</b>	<b>proximity (1)</b>
<b>pitch (8)</b>	106:6,9,12	10:11,25 35:22	133:8	51:21
69:2,6,16	117:9,11	<b>preparation (...)</b>	<b>process (1)</b>	<b>Public (5)</b>
80:20,20	118:20 120:3	49:14 129:10	131:15	1:11 2:7 5:4
81:21 82:10	<b>play (1)</b>	<b>prepare (3)</b>	<b>produce (1)</b>	133:19 136:7
82:11	126:10	36:23 45:17	51:3	<b>purely (1)</b>
<b>place (8)</b>	<b>please (15)</b>	61:13	<b>produced (2)</b>	23:21
21:8 38:18	5:13,16 10:9	<b>prepared (13)</b>	26:12,20	<b>purpose (6)</b>
41:15 42:18	21:3 26:18	27:18 45:12,15	<b>product (1)</b>	23:22 43:24
46:16 50:14	28:13,22 45:4	50:24 62:8	127:16	45:20 119:23
99:16 111:7	60:2 93:13	85:6 91:24	<b>products (5)</b>	120:2,15
<b>Plaintiff (1)</b>	102:17	92:4 95:5,16	9:10,20 37:3,6	<b>purposes (2)</b>
3:5	103:12	116:9 127:11	37:13	45:13 83:15
<b>Plaintiff's (2)</b>	111:10	127:12	<b>professional ...</b>	<b>pursuant (1)</b>
5:9 135:3	130:16	<b>present (1)</b>	7:8,13 9:15	2:7
<b>plan (19)</b>	131:10	31:22	22:12 33:11	<b>put (7)</b>
56:8,19 57:7	<b>plumb (1)</b>	<b>presented (2)</b>	114:17	12:7,10 20:25
57:10 58:3,6	120:11	79:23 122:12	115:15 119:3	41:2 51:6
58:17 59:22	<b>plumbing (2)</b>	<b>press (1)</b>	122:3 123:11	74:17 94:8
59:23 60:3,12	129:7,9	124:13	127:13,13,17	<b>putting (1)</b>
65:10,11 81:6	<b>point (7)</b>	<b>pressures (1)</b>	128:9 129:18	116:12
82:20 100:4,6	6:12 20:4 21:4	127:8	<b>program (9)</b>	
102:2 106:3	96:10 100:15	<b>presume (2)</b>	45:24 46:22	<b>Q</b>
<b>plank (4)</b>	101:24	63:12 82:2	48:21 114:9	<b>quadrant (1)</b>
60:15,16,18,20	108:12	<b>Pretty (1)</b>	114:13,14,16	99:18
<b>planks (1)</b>	<b>pointing (1)</b>	69:17	115:5,7	<b>qualification...</b>
47:20	25:5	<b>previous (1)</b>	<b>programs (1)</b>	123:11

March 22, 2021

Page 151

<b>qualify (1)</b>	52:1 53:1	<b>raised (1)</b>	104:16 114:5	95:22 104:20
125:2	54:1 55:1	125:23	116:13	104:23 105:7
<b>question (18)</b>	56:1 57:1	<b>RALPH (1)</b>	120:16	128:5 130:17
22:21 23:14	58:1 59:1	1:9	121:18	<b>reflect (2)</b>
44:16 48:13	60:1 61:1	<b>read (6)</b>	122:10 123:7	51:18 100:23
56:23 82:7	62:1 63:1	28:13 94:3	136:15	<b>reflected (1)</b>
93:10 118:9	64:1 65:1	98:23 122:7	<b>recorded (1)</b>	92:18
119:18 122:8	66:1 67:1	123:4,7	124:5	<b>reflects (2)</b>
122:25 123:5	68:1 69:1	<b>reads (1)</b>	<b>records (1)</b>	44:23 102:24
125:22	70:1 71:1	53:15	72:19	<b>regard (11)</b>
127:20 130:6	72:1 73:1	<b>ready (1)</b>	<b>reduced (3)</b>	31:14 34:2,14
130:13,15	74:1 75:1	114:2	47:5 48:2 89:7	34:17 35:25
131:10	76:1 77:1	<b>really (7)</b>	<b>refer (20)</b>	40:14 48:10
<b>questioning (1)</b>	78:1 79:1	52:25 58:14	36:20 50:21	48:20 49:4
111:3	80:1 81:1	62:6,13 64:25	52:11 53:21	51:2 121:14
<b>questions (6)</b>	82:1 83:1	77:12 101:2	53:24 59:25	<b>regarding (7)</b>
111:5 113:25	84:1 85:1	<b>reason (9)</b>	60:11 67:8	19:14 29:18
114:5 121:14	86:1 87:1	90:17 93:17	70:3 72:23	39:23 40:17
132:14 133:7	88:1 89:1	94:12 97:2	73:14 76:8	48:14 91:18
<b>R</b>	90:1 91:1	107:15	77:18 79:14	101:5
<b>R (140)</b>	92:1 93:1	109:12,14	86:24 87:21	<b>regular (1)</b>
2:4 3:2 4:2,6	94:1 95:1	122:12 132:3	92:22 107:4	119:2
4:17 5:2,2,14	96:1 97:1	<b>reasonable (2)</b>	111:13,15	<b>regularly (2)</b>
6:1 7:1 8:1	98:1 99:1	118:4 120:24	<b>reference (10)</b>	114:16 115:14
9:1 10:1 11:1	100:1 101:1	<b>reasons (1)</b>	47:19 56:19	<b>regulations (1)</b>
12:1 13:1	102:1 103:1	132:5	57:7 75:24	129:24
14:1 15:1	104:1 105:1	<b>recall (6)</b>	76:4 81:21	<b>related (10)</b>
16:1 17:1	106:1 107:1	27:11 66:7	83:3 119:20	24:18,20 27:17
18:1 19:1	108:1 109:1	68:5 74:24	123:10 128:6	27:17 34:13
20:1 21:1	110:1 111:1	95:18 108:20	<b>referred (4)</b>	37:17 38:25
22:1 23:1	112:1 113:1	<b>receive (2)</b>	57:13 65:23	77:21,24
24:1 25:1	114:1 115:1	19:10,13	125:8 127:21	136:17
26:1 27:1	116:1 117:1	<b>recess (1)</b>	<b>referring (13)</b>	<b>relation (1)</b>
28:1 29:1	118:1 119:1	111:8	46:6 54:9	27:20
30:1 31:1	120:1 121:1	<b>recognize (1)</b>	59:18 60:16	<b>relationship ...</b>
32:1 33:1	122:1 123:1	42:22	65:9 81:6	56:15 108:9
34:1 35:1	124:1 125:1	<b>recollection (2)</b>	85:21 86:14	<b>relevance (1)</b>
36:1 37:1	126:1 127:1	62:14 92:14	88:14 91:11	125:14
38:1 39:1	128:1 129:1	<b>recollections ...</b>	101:22	<b>remember (1)</b>
40:1 41:1	130:1 131:1	92:20	102:16	11:15
42:1 43:1	132:1 133:1	<b>record (19)</b>	126:17	<b>repeating (1)</b>
44:1 45:1	133:13 134:5	5:13,16,24	<b>refers (14)</b>	40:25
46:1 47:1	135:12	10:9 20:25	52:14 66:15	<b>replication (1)</b>
48:1 49:1	136:10	38:16 41:13	68:12 74:14	89:3
50:1 51:1	<b>rain (1)</b>	42:16 53:12	74:15 75:6	<b>report (5)</b>
	126:13	103:2 104:12	84:2 87:22	29:5,8,11,14



March 22, 2021

Page 152

29:25	36:23 37:2	128:21	70:20 71:16	1:11
<b>reported (1)</b>	38:7,12,19	131:14,15,22	72:5,24 74:18	<b>Science (2)</b>
124:5	94:14,14	<b>rightmost (1)</b>	74:19,19	6:18 9:24
<b>reporter (10)</b>	<b>reviewed (7)</b>	51:11	75:18 80:2	<b>SCORDINO ...</b>
2:6 5:12,15	37:22,25 38:22	<b>risk (3)</b>	83:14 86:11	1:9
20:4 21:2	38:25 39:3	37:21 130:17	87:3 97:17	<b>scratched (1)</b>
41:16 122:6	89:6 94:10	130:18	99:4 101:14	73:20
123:4,7 136:7	<b>revise (1)</b>	<b>Road (3)</b>	101:14	<b>scratching (2)</b>
<b>represent (3)</b>	23:13	3:6,19 4:7	105:11,23	73:24 74:5
80:9 126:19	<b>revisit (1)</b>	<b>ROBYN (1)</b>	117:4,5,7	<b>screen (5)</b>
127:16	45:22	1:9	120:9,11	41:5,19 50:2
<b>representatio...</b>	<b>right (79)</b>	<b>Rode (2)</b>	<b>ruling (1)</b>	54:11 57:11
106:16 116:22	5:20 14:2 22:4	3:17 4:19	70:18	<b>screw (1)</b>
<b>request (5)</b>	23:13 24:22	<b>roof (38)</b>	<b>RULINGS (1)</b>	111:20
19:5 26:11	25:19 30:17	15:2 16:16	134:18	<b>screws (5)</b>
28:19,23	31:25 35:8	48:25 56:7,8		18:15 19:20
45:17	42:25 45:2	57:25 58:3,5	<b>S</b>	30:8,14,21
<b>requested (1)</b>	47:25 50:4	58:6 59:22	<b>S (5)</b>	<b>scribble (1)</b>
123:6	51:8,14 52:3	64:13,16,22	3:2 4:2,17,17	79:12
<b>REQUESTS ...</b>	52:25 54:9,11	65:10,11,13	5:2	<b>scribbled (3)</b>
134:9	54:12,14	66:9,11 69:2	<b>safe (3)</b>	63:2,18 67:4
<b>requirement...</b>	56:21 57:12	69:7,10,16	32:12 124:21	<b>scroll (17)</b>
130:20 131:5	58:22 59:19	70:5 71:4,15	131:11	41:8 43:5 45:3
<b>reserve (2)</b>	61:6,10 62:12	72:8 73:16,17	<b>safely (2)</b>	47:8 56:4,25
5:20 132:3	62:22 64:19	73:18 80:19	127:6,7	61:7 65:5
<b>reserving (1)</b>	67:9,24 68:15	80:20,21,23	<b>safety (2)</b>	74:8 76:2
132:4	72:14 73:10	81:3,4 82:10	31:20 90:4	81:16 84:21
<b>residence (1)</b>	74:22,24 76:4	86:18,18	<b>saying (1)</b>	85:4 89:13
85:7	77:11,13 80:8	<b>roofing (1)</b>	56:24	93:2,13 107:9
<b>resolve (1)</b>	82:6,9 84:22	80:24	<b>says (36)</b>	<b>se (1)</b>
102:3	86:4,21 87:5	<b>room (1)</b>	47:13,18 51:9	62:6
<b>respect (3)</b>	89:12 90:6,9	12:13	53:7,23,23	<b>seal (2)</b>
116:7 124:5	91:13,20	<b>rough (9)</b>	56:7,8 59:3,6	43:5,7
131:7	92:25 93:20	69:15,18,25	63:3 72:9	<b>search (1)</b>
<b>Respondents...</b>	93:22 94:21	80:22 84:4,5	73:9 75:15	8:25
1:15	94:23 96:13	84:6 89:5	76:6,21 77:3	<b>searches (1)</b>
<b>response (4)</b>	96:25 97:17	119:10	77:15,16 81:8	116:2
38:12 42:6	100:3,19	<b>roughly (46)</b>	82:19,20,22	<b>second (2)</b>
107:16	101:21 103:4	8:5,12,14,19	87:15 88:11	42:13 99:21
127:19	105:6 106:20	8:19 10:22	89:10 91:20	<b>section (8)</b>
<b>rest (2)</b>	106:23 108:5	11:11,17 13:3	95:9,10,12	52:13 58:17
73:7 86:9	110:24	13:7,11,12	100:23 104:7	69:15 80:20
<b>result (2)</b>	115:17 116:4	34:22 40:3,9	105:9 108:3	101:18 102:2
125:7 130:24	117:14	44:20 53:2,16	111:15	105:5 116:16
<b>review (9)</b>	118:11	55:25,25 58:6	112:19	<b>see (60)</b>
5:21 35:25	120:18 126:2	58:24 62:2	<b>SCHETTIN...</b>	8:10 20:15

30:20 33:16	<b>service (1)</b>	83:12 87:11	<b>slope (6)</b>	110:7,12
33:20 41:4,18	21:20	96:12,23	58:5,7 64:14	131:22
41:21 42:10	<b>services (3)</b>	97:13 105:15	64:16,16	<b>speaking (3)</b>
45:10 47:13	24:14,18 34:12	<b>sides (4)</b>	68:16	125:3 131:23
49:22 50:8	<b>set (2)</b>	73:3 80:5	<b>slowly (1)</b>	132:6
51:8 52:25	136:13,22	81:15 113:9	41:8	<b>species (4)</b>
53:7 54:7	<b>Seven (1)</b>	<b>significant (1)</b>	<b>small (2)</b>	13:23 77:19,20
56:7,8 58:18	135:18	126:20	13:3 16:2	78:2
59:3,6 63:19	<b>Seventy (1)</b>	<b>signify (1)</b>	<b>smaller (1)</b>	<b>specific (1)</b>
65:3,9,12	135:10	43:13	90:2	19:18
66:22 69:24	<b>severe (2)</b>	<b>silver (1)</b>	<b>Society (3)</b>	<b>specifically (1)</b>
71:20,21 72:9	123:22 124:14	109:17	36:15 127:25	128:13
72:20 73:9	<b>Shannon (1)</b>	<b>SILVESTRI ...</b>	129:25	<b>specified (1)</b>
74:8,12 76:5	4:18	1:9	<b>software (3)</b>	62:9
76:21,24	<b>sheathing (1)</b>	<b>simple (1)</b>	46:3,13,22	<b>specify (1)</b>
77:11 82:19	16:12	11:20	<b>somebody (2)</b>	46:5
85:18 86:21	<b>sheer (1)</b>	<b>Simultaneou...</b>	24:2,3	<b>spoke (2)</b>
87:15 89:9	113:2	125:3 132:6	<b>something-st...</b>	31:12 132:19
91:8 93:12	<b>sheets (1)</b>	<b>simultaneous...</b>	95:10	<b>Spruce (2)</b>
99:17 101:13	115:19	46:22	<b>sorry (39)</b>	37:18 72:25
103:24 106:2	<b>Shore (1)</b>	<b>sir (8)</b>	6:7 7:16,21	<b>square (2)</b>
112:11,12	4:7	7:3 10:6 12:13	8:11 14:7,8	40:9 79:17
113:11,18	<b>short (1)</b>	16:13 19:21	14:12,25	<b>stability (1)</b>
118:11,15	111:8	68:20 74:11	18:23 26:14	29:19
129:7,9,12,14	<b>shorter (3)</b>	110:25	27:19 30:20	<b>stairs (1)</b>
<b>seeing (3)</b>	102:7 105:7,24	<b>sit (2)</b>	32:7 37:15	118:24
21:18 23:16	<b>show (2)</b>	66:5 91:5	38:15 39:10	<b>stamp (27)</b>
91:13	70:19 84:16	<b>site (4)</b>	39:11 40:21	42:20,21 43:6
<b>seen (2)</b>	<b>showed (2)</b>	29:15,15 92:14	40:24 52:19	44:23,24 45:5
23:18 42:3	84:13,15	126:12	54:6 55:10	46:6,7,8,9,10
<b>self (1)</b>	<b>showing (5)</b>	<b>Six (1)</b>	63:22 66:16	46:11,18 47:9
35:25	58:5 69:16	135:11	66:17 68:20	48:5 49:21
<b>send (2)</b>	80:20,21	<b>size (7)</b>	73:10 76:23	58:2 61:8,9
28:9 42:13	91:21	51:18,19 68:2	78:17 93:9	61:14,24
<b>senior (2)</b>	<b>shown (6)</b>	81:14 90:2	96:4 98:19	64:25 65:4
9:6,7	52:2,15,22	119:9,10	99:22 100:5	66:19 67:15
<b>sent (6)</b>	57:9 58:13	<b>sketch (4)</b>	102:9 106:22	106:25
25:16,20 28:7	98:25	61:16 69:18	108:14	111:14
28:10 41:24	<b>side (26)</b>	85:11,22	110:20	<b>stamped (6)</b>
42:5	12:2,3,4 55:19	<b>sketches (1)</b>	113:13	43:15,20 44:4
<b>Seriously (1)</b>	69:10,11,24	89:7	<b>south (6)</b>	44:14,23
23:12	71:11,21	<b>slate (1)</b>	7:15,17 8:9,10	104:18
<b>served (1)</b>	72:15,16	72:7	40:3 105:8	<b>stamping (1)</b>
19:4	73:10 77:7,13	<b>slightly (3)</b>	<b>spacing (2)</b>	43:24
<b>serves (1)</b>	80:3,3,13	103:25 117:13	16:10,11	<b>stand (2)</b>
86:15	81:2,8 83:11	117:14	<b>speak (3)</b>	94:15 96:25



March 22, 2021

Page 154

<b>standard (1)</b> 50:18	126:14,19,25 127:3,6	<b>substance (1)</b> 27:15	<b>sustainable (1)</b> 9:20	<b>tall (4)</b> 12:18,19 13:8
<b>standing (1)</b> 124:18	<b>street (1)</b> 77:6	<b>substantiate ...</b> 45:23	<b>SUZANNE (1)</b> 1:11	13:9
<b>started (2)</b> 89:22 114:24	<b>strike (4)</b> 12:5,5 27:18	<b>substrate (1)</b> 111:20	<b>sworn (4)</b> 5:3 45:23	<b>tape (5)</b> 11:20,20 14:10
<b>starting (3)</b> 75:14 79:24	59:5	<b>Suite (3)</b> 3:6,19 4:7	133:15	34:5 72:17
122:10	<b>strong (1)</b> 127:7	<b>sum (1)</b> 27:15	136:14	<b>Tech (1)</b> 10:3
<b>state (15)</b> 2:7 5:12,15	<b>structural (9)</b> 9:6,8,9 34:25	<b>supervised (1)</b> 121:5	<b>T</b>	<b>technical (1)</b> 65:17
8:16 31:18	114:17	<b>supplementa...</b> 45:9	<b>T (2)</b> 4:2,17	<b>Technology (2)</b> 6:21 7:4
36:18,19,20	117:24 119:3	<b>support (29)</b> 16:8 51:9,10	<b>T-100.00 (2)</b> 50:20,21	<b>telephone (1)</b> 26:2
43:7 128:4,9	126:20	51:15,19	<b>take (17)</b> 11:5,10,12	<b>television (2)</b> 124:13 126:18
132:10	127:11	52:10,20,21	17:25 18:14	<b>tell (26)</b> 7:11 29:10,13
135:15 136:3	<b>structure (24)</b> 16:6 18:7	52:22 53:10	21:19 25:24	30:16 31:3,13
136:8	29:18 31:10	60:4,9 86:5	55:18 60:25	63:21,25
<b>stated (6)</b> 5:24 31:15	31:11,17	86:15 88:6,14	70:10,22 87:9	66:15 72:11
33:3 81:9	48:25 70:6,11	88:16 89:9,17	121:21 123:2	74:13 75:16
106:18	77:22 78:24	91:2 95:22,24	125:15	77:15 78:15
118:23	80:24,24 96:9	99:24 102:12	<b>taken (23)</b> 2:6 46:25	78:20,23 79:2
<b>statement (4)</b> 29:18,21 35:24	113:5 117:2	104:23 105:3	47:22 55:22	79:18 80:17
45:13	117:25	105:12,14,17	58:23 59:2,13	94:7 95:22
<b>STATES (1)</b> 1:2	124:21	<b>supported (2)</b> 16:6 85:25	61:19 69:9	97:8,11 99:10
<b>stationery (2)</b> 76:9 93:22	128:17	<b>supporting (7)</b> 16:14,15 95:25	70:21 85:12	112:14
<b>stenotype (2)</b> 2:6 136:7	130:23,25	96:9 105:17	92:21 96:7	119:11
<b>Step (1)</b> 12:17	131:4,7,11	105:21 120:3	98:6,10 101:6	<b>tells (1)</b> 94:9
<b>STEPHEN (1)</b> 1:10	<b>studs (2)</b> 16:11 129:9	<b>supports (2)</b> 91:3 105:19	101:10,18	<b>temporary (5)</b> 12:6,8,10,15
<b>stipulations (1)</b> 5:23	<b>studying (1)</b> 7:3	<b>sure (14)</b> 6:4 26:18	102:7 111:8	118:12
<b>stood (1)</b> 85:13	<b>subject (2)</b> 111:4 113:24	39:11 42:15	115:21	<b>ten (2)</b> 26:23 91:15
<b>stop (5)</b> 31:16,16 33:3	<b>submission (1)</b> 21:5	50:9 56:23	116:16,18	<b>term (2)</b> 13:16 65:17
117:20	<b>submitted (3)</b> 20:2,17 21:9	65:2 67:12	<b>talked (1)</b> 44:13	<b>terms (6)</b> 18:18 34:13
131:25	<b>subpoena (5)</b> 2:8 19:4 38:12	73:20 75:5,9	<b>talking (15)</b> 12:16 34:21	35:22 37:20
<b>storms (11)</b> 123:22 124:2,4	42:6 107:16	96:24 101:2	53:3 54:15	62:24 98:13
124:10,15,19	<b>Subscribed (1)</b> 133:15	108:15	56:17 59:22	<b>test (2)</b> 14:3,8
		<b>survive (1)</b> 127:2	71:22 73:22	<b>testified (5)</b> 5:4 34:17
		<b>sustainabilit...</b> 9:19	83:18 102:19	
			102:21,22	
			104:6 107:24	
			112:21	

March 22, 2021

Page 155

38:22,24	116:25	<b>titled (1)</b>	49:18 50:10	<b>treated (1)</b>
39:13	123:14	58:3	53:10 54:14	128:17
<b>testify (2)</b>	<b>thought (2)</b>	<b>to-date (1)</b>	56:4,21 58:16	<b>tree (185)</b>
22:11,15	14:14 31:3	26:6	59:5 61:7	11:3,21,25
<b>testifying (4)</b>	<b>three (3)</b>	<b>today (8)</b>	64:6 65:5	12:2,4,4,7,20
22:17,19 36:22	27:14 121:19	36:22 38:24	66:18 67:17	13:17 14:13
39:8	125:24	39:8,13 49:14	68:23 74:7	14:19,21,22
<b>testimony (5)</b>	<b>tickets (1)</b>	49:16 66:6	76:2,15 81:16	15:5,11,14,21
36:24 122:11	109:6	91:5	81:25 82:6,14	16:4,8,25
124:23,24	<b>tie (1)</b>	<b>today's (1)</b>	84:20 85:3	17:2,8,9,18
136:16	96:3	41:17	88:9,15 89:12	17:20 18:2,12
<b>testing (2)</b>	<b>ties (1)</b>	<b>toilet (1)</b>	90:10 92:25	18:18 19:11
18:8,12	87:23	129:5	93:9,13 95:19	19:14 21:10
<b>Thank (12)</b>	<b>timber (37)</b>	<b>told (2)</b>	102:22 103:5	21:13 22:5
6:8 10:10 21:9	53:7,7,19,23	112:6 120:20	103:11,23	23:16,18
28:25 41:21	53:24 54:7,10	<b>TONY (1)</b>	104:4,11,15	24:11,20
82:13 110:24	54:15,17,19	1:10	106:14,24	25:24 27:20
113:23 132:9	55:3,4,5,17	<b>top (26)</b>	107:7 110:24	29:19 30:4,5
132:14,15	59:8 62:9	48:6 56:5 58:2	111:4,9,12	30:9,18,24
133:7	77:20,25 78:4	59:18 66:21	113:23 114:3	31:14,20 32:2
<b>thanked (1)</b>	78:8 79:4	68:22 69:14	116:11	32:6,10,25
25:24	85:19,24 86:2	70:5,5 71:15	117:18 118:8	33:8,17,19
<b>Thanks (1)</b>	86:15,18,18	72:7,8 73:13	118:21 119:7	34:14,18,20
46:18	89:10 91:19	76:5,22,25	119:16	34:24 36:19
<b>thickness (4)</b>	96:21,23	79:24 80:23	121:13,22	37:18,21
15:15,17,18	97:21,25 98:6	80:23 87:17	122:4,9,21	38:25 39:5,7
16:11	98:11 103:16	91:21 94:22	123:25	39:12,16,19
<b>thing (3)</b>	120:19	95:9 97:3	124:22	39:23,25 40:2
24:24 72:4,5	<b>timbers (5)</b>	101:4 104:20	125:13,17	40:5,8,10,11
<b>think (36)</b>	54:8,11 62:4	<b>Tosca (122)</b>	126:5,7,22	40:12,14,22
22:23,25 24:3	96:2 119:8	3:21 5:25 6:5,8	127:4 129:2	47:16 48:10
28:18 35:17	<b>time (12)</b>	6:10 10:8	129:21 130:3	48:15,20 49:4
53:2 62:5	2:5 8:3,4 11:14	19:9,19,24	130:8,12	55:4,12,14,15
64:10,21	14:2 30:23	20:11,19 22:8	131:6,8,16,19	55:25 57:15
74:18 75:5,15	31:9 38:9	22:14,25 23:6	132:2,10,15	57:16 58:15
77:9 79:25	39:9 79:6	23:11 25:7	132:18 133:6	58:23,25 59:2
80:15 83:9	108:14	26:10,16	134:5	59:14 60:9
87:16 88:10	117:15	28:12,25	<b>trained (1)</b>	61:17 62:14
89:5 97:16,16	<b>Timer (1)</b>	32:19 33:5	33:11	62:19 63:11
97:19 98:17	53:25	35:16 40:21	<b>transcript (4)</b>	64:17 65:21
98:22,25	<b>times (6)</b>	41:2,7,22	5:21 20:5 21:4	67:10,11
102:4,5 105:9	10:16 74:13	42:8,15,19	44:10	69:16,18,22
105:9,19	75:3,14 80:15	43:4 44:11	<b>translated (1)</b>	69:25 70:13
107:23	121:19	45:3 46:7,14	100:25	70:24 71:11
111:25	<b>title (1)</b>	46:17 47:7	<b>translation (1)</b>	73:2,10 74:16
112:19 113:7	50:18	48:4,12,17	95:2	74:24 75:11



March 22, 2021

Page 156

76:18 77:7,22	1:10,10	<b>underside (4)</b>	120:9	71:15 72:8
78:9 79:5,16	<b>try (1)</b>	80:24 96:20,20	<b>Victor (7)</b>	73:2,16 80:4
80:11,21,21	98:22	97:2	3:12 41:23,25	83:20,20
83:2,6 85:9	<b>trying (11)</b>	<b>understand (8)</b>	57:3 67:18	96:11,17
85:12,15	64:11,12,13	33:5,9 44:15	82:7 104:5	102:10 105:9
87:23 88:2	67:10 74:20	56:24 84:8	<b>video (7)</b>	105:14,18
91:24 95:16	75:23 79:20	88:24 125:17	11:12 24:25	<b>walls (14)</b>
96:2,8,11,15	80:3 86:25	132:4	25:2,9,12,13	14:20 15:12,20
96:17 99:3	102:2,11	<b>unidentified ...</b>	134:11	15:25 16:5,16
100:7 101:19	<b>turning (1)</b>	1:13	<b>videoconfere...</b>	48:25 55:15
101:20 102:6	42:8	<b>UNITED (1)</b>	1:18 2:5 3:9,14	65:11,14,25
102:10,12	<b>Twelve (1)</b>	1:2	3:22 4:11	66:2 117:2,12
103:18	135:8	<b>unnamed (1)</b>	<b>Village (15)</b>	<b>Wampum (2)</b>
104:21,24	<b>twice (1)</b>	1:13	1:9,10,10,10	76:22,24
105:8,15	107:18	<b>unrelated (4)</b>	1:12,12 27:4	<b>want (10)</b>
106:19	<b>two (16)</b>	63:11,14,15,16	27:4,8 36:4	22:2 24:23
109:12,23	10:22 27:14	<b>upper (1)</b>	108:25 109:4	56:25 82:15
110:13,17	29:5 38:6	96:22	109:9 135:5,7	83:23 84:17
111:22	44:21 55:22	<b>uprooted (1)</b>	<b>Virginia (4)</b>	93:6 107:22
112:10 113:9	65:20 83:10	124:14	7:15,18 8:15	122:21
113:17	90:18,19,19	<b>upside (2)</b>	8:16	130:14
115:22 116:3	94:11,12	107:21,24	<b>visit (7)</b>	<b>wanted (3)</b>
116:23	107:5 124:7	<b>use (16)</b>	21:13 29:15,15	6:4 28:11
117:12,16	124:19	8:24 11:19	92:15,22	35:20
118:13,20,25	<b>type (6)</b>	18:19 31:6	115:22 116:4	<b>wants (1)</b>
120:4,7,9,10	13:2,14,18	32:5,9,24	<b>visual (9)</b>	41:23
121:11	25:10 78:8,12	33:20 72:14	13:25 30:15	<b>wasn't (2)</b>
123:10,13,15	<b>typed (1)</b>	83:22 114:8	34:25 39:4	67:19 90:6
123:21	42:25	114:20 115:8	40:15 73:6	<b>way (14)</b>
124:17 126:3	<b>types (1)</b>	115:14 126:3	78:7 86:8	12:12 22:5
126:24	78:10	132:20	112:15	24:23,23 26:6
128:14,16,23	<b>Typical (1)</b>		<b>visually (8)</b>	55:18 81:13
129:20	81:15	<b>V</b>	51:20,22,23,25	82:4 102:13
132:20,22		<b>value (3)</b>	55:21 69:22	103:8 105:3
<b>Treehouse (1)</b>	<b>U</b>	98:18,19,20	74:8 119:9	106:5 130:19
48:8	<b>U (1)</b>	<b>variation (1)</b>		136:19
<b>trees (1)</b>	4:2	98:21	<b>W</b>	<b>we'll (3)</b>
124:14	<b>unclear (1)</b>	<b>vehicle (1)</b>	<b>W (1)</b>	121:20 123:2
<b>trial (4)</b>	104:16	35:6	5:2	125:15
2:3 23:3	<b>underneath (...)</b>	<b>versus (1)</b>	<b>wait (4)</b>	<b>we're (11)</b>
136:13,15	51:16 52:15	116:17	103:11,11,11	19:3,5,25
<b>true (1)</b>	58:3 60:11	<b>vertical (11)</b>	103:12	35:18 69:13
136:15	85:12,14	54:18 55:2,3,4	<b>wall (20)</b>	100:2 102:20
<b>trunk (2)</b>	97:10 100:10	56:18 82:11	14:23 15:14,17	102:22 104:5
120:7,9	100:11,13	83:10 87:4	15:18 16:10	107:23
<b>Trustee (2)</b>	105:20	101:7,19	59:2 64:23	112:21

March 22, 2021

Page 157

<b>We've (1)</b> 122:13	<b>withstood (1)</b> 126:25	<b>Works (1)</b> 1:11	104:9 107:2	69:2 70:7
<b>weather (1)</b> 123:18	<b>witness (31)</b> 2:4 4:5 5:2,14	<b>worst (1)</b> 98:18	114:2,4,7	72:13 135:5
<b>website (1)</b> 63:6	5:17 22:15,16	<b>wouldn't (2)</b> 116:14 118:6	121:17,24	<b>1-1 (1)</b> 52:13
<b>weeks (4)</b> 21:12 27:13,14 95:17	40:23 50:11	<b>write (3)</b> 64:15,15 77:4	122:6,19,24	<b>1.25 (1)</b> 75:14
<b>weight (1)</b> 113:5	53:8 54:13	<b>writing (5)</b> 26:19 28:23	124:3,25	<b>1.91 (2)</b> 72:12 74:19
<b>went (4)</b> 10:21 11:14 40:12 95:15	56:15 57:9,21 59:11,15 64:8	47:5 48:2	125:15 130:5	<b>1/2 (14)</b> 59:14 71:21,23
<b>west (1)</b> 83:17	67:20 82:2,9	108:2	132:13 134:7	87:3 99:3,4
<b>WHEREOF ...</b> 136:21	90:12 99:14	<b>written (18)</b> 28:6 29:24	<b>Yannacone's...</b> 113:25	101:7,12
<b>wide (4)</b> 13:7,9 84:2 86:13	103:24	47:10 60:14	<b>yeah (18)</b> 13:11 15:13	102:5 103:17
<b>width (2)</b> 64:18 80:5	120:17 122:8	62:4 63:4	19:24 53:5	106:3 111:25
<b>willing (1)</b> 21:24	122:14 123:5	69:21 73:20	63:3 65:24	112:5 113:7
<b>wind (1)</b> 126:13	134:4 136:12	75:10 76:18	67:6 73:6,24	<b>1:29 (1)</b> 133:9
<b>window (7)</b> 12:25 70:23 79:25 83:25 84:3,7,12	136:16,21	77:12 90:25	77:2 87:18,19	<b>10 (4)</b> 90:11 91:11,14
<b>windows (2)</b> 31:8,10	<b>wood (29)</b> 13:19,20,22	92:19 93:21	90:21 93:15	92:17
<b>winds (1)</b> 126:14	18:16 19:21	97:19 101:4	94:13 103:17	<b>10:10 (1)</b> 1:20
<b>winter (1)</b> 11:17	30:17 47:18	108:7 112:9	107:21 108:4	<b>11 (6)</b> 70:7 72:13
<b>wires (1)</b> 18:9	47:20 48:7,14	<b>wrong (1)</b> 72:10	<b>year (5)</b> 8:12,12,14	93:2,3,11
<b>wiring (4)</b> 17:17,19 18:5 18:7	52:20 53:25	<b>wrote (3)</b> 62:6 63:9	10:8 11:14	95:16
<b>withdraw (1)</b> 93:9	54:4 60:14,16	116:2	<b>years (9)</b> 8:19 10:22	<b>11023 (1)</b> 4:8
<b>withdrawn (1)</b> 131:2	77:19 78:10	<b>X</b> <b>X (3)</b> 1:3,16 134:2	29:6 40:4	<b>111 (1)</b> 134:5
	78:13,20 79:2	<b>XX-'53 (1)</b> 10:7	44:21 91:7	<b>114 (1)</b> 134:7
	86:14 87:12	<b>Y</b> <b>Yannacone (...)</b> 3:12 19:22,25	114:22 124:7	<b>11501 (1)</b> 3:20
	96:14,16,17	<b>Y</b> <b>Y</b> 20:16 21:2	124:19	<b>11747 (1)</b> 3:7
	96:18 97:3,15	<b>Y</b> <b>Y</b> 23:4,9 41:10	<b>York (17)</b> 1:2 2:7 3:7,20	<b>12 (16)</b> 64:16 68:16,25
	103:15	<b>Y</b> <b>Y</b> 44:7 56:13	4:8 7:14,23	69:5 74:13,17
	<b>wooden (1)</b> 119:5	<b>Y</b> <b>Y</b> 57:4,18,22	7:25 9:4	75:3 80:15,16
	<b>word (6)</b> 50:6 53:25	<b>Y</b> <b>Y</b> 59:16 64:4	10:12 36:18	81:22 82:11
	76:24 82:23	<b>Y</b> <b>Y</b> 67:13 81:18	36:20 43:8	82:11 93:21
	83:22 121:20	<b>Y</b> <b>Y</b> 82:3,13 88:7	128:5,10	93:21 111:25
	<b>words (3)</b> 55:9 77:12	<b>Y</b> <b>Y</b> 88:13 102:15	136:3,8	112:6
	113:14	<b>Y</b> <b>Y</b> 103:9,21	<b>Z</b>	<b>13 (4)</b> 95:21 111:9,14
	<b>work (11)</b> 31:16,16 33:3		<b>0</b>	
	33:4 35:11		<b>07930 (1)</b> 5:18	
	115:15,18		<b>1</b>	
	117:21,22		<b>1 (9)</b> 5:9 42:11 43:6	
	121:4 127:16		43:20 44:24	
	<b>worked (2)</b> 121:3,5			



March 22, 2021

Page 158

112:21	67:8,12,25	13:7,9 46:8	92:22,23	<b>52 (1)</b>
<b>132 (1)</b>	69:25 80:25	48:5 53:16,20	100:25 108:3	75:16
134:5	91:7 114:11	71:23 80:24	108:7 113:6,7	<b>525 (1)</b>
<b>135 (1)</b>	119:12 127:9	97:20 135:9	116:17,17,17	75:18
3:6	127:9 135:7	<b>3/4 (2)</b>	116:18,18,19	<b>54 (2)</b>
<b>148530-752 (1)</b>	<b>2-1-19 (2)</b>	60:14 80:15	119:12,12	87:3 101:7
3:24	94:4 95:4	<b>3/8/21 (1)</b>	135:11	<b>54.5 (1)</b>
<b>15 (19)</b>	<b>2.6 (1)</b>	43:11	<b>4.6 (7)</b>	86:22
63:19,22 64:17	84:23	<b>30 (14)</b>	72:20,24 73:6	<b>55 (1)</b>
64:17,17,19	<b>2:18-CV-070...</b>	64:17,18,20	74:13,15,23	40:4
64:19 65:23	1:16	66:11,12 83:9	75:3	<b>59 (4)</b>
66:21,21	<b>20 (5)</b>	83:9,11,14,18	<b>4.8 (1)</b>	10:12 21:11
99:23 102:23	67:11 72:25	84:2,9,9,23	87:16	35:9 40:13
103:3 104:3	79:12,13	<b>30-inches (1)</b>	<b>40 (2)</b>	
104:10,14,16	80:21	84:25	88:2 106:3	<b>6</b>
104:17	<b>20-inch (1)</b>	<b>305 (1)</b>	<b>45 (2)</b>	<b>6 (72)</b>
105:13	37:17	3:19	34:22 40:9	46:11,18 49:19
<b>15-inches (1)</b>	<b>2002 (1)</b>	<b>31.5 (5)</b>	<b>48 (6)</b>	49:21 53:2,5
64:12	101:25	68:3,3,4,6,8	87:2,3,19,20	53:14,24 54:3
<b>17 (4)</b>	<b>2004 (1)</b>	<b>33 (2)</b>	101:7 105:6	54:15,19,20
106:15 107:5,7	6:23	79:24 80:2	<b>5</b>	54:20 55:5
107:11	<b>2021 (4)</b>	<b>330 (1)</b>	<b>5 (34)</b>	56:6 57:12,14
<b>18 (3)</b>	1:19 45:11	3:19	13:7,9 46:10	58:2 59:6,10
106:24,25	133:17	<b>34 (1)</b>	46:19,20	59:20,21
107:19	136:22	85:2	48:18,18	60:10,14,15
<b>19 (1)</b>	<b>210 (1)</b>	<b>34-inches (1)</b>	61:24 64:16	60:22 65:4
134:10	4:7	84:25	68:16,25 69:3	66:15,16,23
<b>191 (1)</b>	<b>22 (1)</b>	<b>4</b>	69:5 74:13,24	67:8,12,25
72:10	1:19	<b>4 (61)</b>	75:3,14 80:15	71:23 73:9,13
<b>1977 (1)</b>	<b>22nd (1)</b>	13:7 46:9	80:15 81:21	73:21 75:15
10:5	136:22	48:12 52:24	82:11,11 88:8	75:19 80:15
<b>1984 (2)</b>	<b>233 (1)</b>	52:24 53:2,5	88:8,10 93:4	85:21,22
8:5,17	4:7	53:6,6,15,15	93:6 101:14	86:12,13
<b>1986 (1)</b>	<b>24 (3)</b>	53:17,17,23	101:14,14	88:11,11
7:25	74:19 75:2,4	54:3,15,19	114:11 127:9	89:17,18,24
<b>1987 (1)</b>	<b>25 (2)</b>	55:5 57:12,14	127:10	90:14 91:9,19
114:24	75:5 134:11	59:6,10,14	135:12	91:20 92:22
<b>2</b>	<b>250S (1)</b>	63:3 85:21,22	<b>5.25 (2)</b>	92:23 93:11
<b>2 (28)</b>	3:6	86:12,13	97:10 98:14	93:12 97:18
5:17 45:4,5,8	<b>26 (1)</b>	89:10,10,17	<b>5/12 (1)</b>	97:20 100:25
46:7,19,20	134:12	89:18,23,23	81:20	116:17,19
47:8 53:16,20	<b>28 (1)</b>	89:24 90:14	<b>50 (1)</b>	119:12 134:5
59:14 60:10	134:13	90:15,15,25	106:3	135:6,8,10,13
60:15,22	<b>3</b>	90:25 91:9,19	<b>51 (2)</b>	135:15,16,17
66:14,16,23	<b>3 (10)</b>	91:19,19,20	105:10 106:3	135:20
				<b>6-3 (2)</b>

March 22, 2021

Page 159

71:21,21	103:22 104:5			
<b>6.05 (1)</b>	<b>87 (8)</b>			
98:13	99:3,4,6			
<b>6.3 (1)</b>	101:12 102:5			
71:23	103:17,21			
<b>60s (1)</b>	106:3			
115:11	<b>87.5 (8)</b>			
<b>63 (17)</b>	99:17 100:3,8			
87:4,5,6,11,13	100:15			
98:16 99:24	101:16 104:5			
100:23,24	104:7,19			
101:3,6,13				
102:17,24	<b>9</b>			
103:6,13	<b>9 (2)</b>			
105:13	85:4 89:15			
	<b>90 (1)</b>			
<b>7</b>	100:18			
<b>7 (16)</b>	<b>90s (2)</b>			
5:9 21:17,21	115:13,13			
21:23 25:17	<b>94 (2)</b>			
25:21 36:21	100:16 106:3			
61:9,14 62:24	<b>976 (1)</b>			
66:19 67:15	97:7			
74:10 107:25	<b>99 (1)</b>			
108:5 135:17	106:3			
<b>7.3 (2)</b>				
96:5 99:5				
<b>7/8 (3)</b>				
70:2,3 80:25				
<b>70s (1)</b>				
115:11				
<b>8</b>				
<b>8 (7)</b>				
69:25 76:3,4				
82:17 89:14				
107:9,12				
<b>80 (1)</b>				
79:11				
<b>80s (1)</b>				
8:8				
<b>82 (3)</b>				
100:19,20				
106:3				
<b>84 (4)</b>				
102:17 103:9				



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JOHN LEF  
ADDRESS  
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VIN #  
BABYLON

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Date of Offense	7/11
Place of Occurrence	59 C

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MAKE	CHEV <input type="text"/>	FORD <input type="text"/>	HYUN <input type="text"/>

Date of Offense	7/12
Place of Occurrence	59

SPECIFIC SECTION: 360

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<div> <div> <div>PLATE</div> <div>STATE</div> </div> <div> <div>DATE</div> <div>EXPIRE</div> </div> </div>										<div> <div> <div>PLATE</div> <div>TYPE</div> </div> <div> <div>Pass.</div> <div>Boat</div> <div>Comm.</div> <div>Trail</div> </div> <div>Other (Specify Type)</div> </div>										<div> <div> <div>ON COMPLAINT</div> <div>REG. EXPIRE</div> </div> </div>									
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THE ABOVE DEFENDANT IS CHARGED AS FOLLOWS	
Date of Offense 7/13/18	Time 3 <sup>00</sup>
Place of Occurrence 59 COLLEGE AVE	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM Babylon, New York

51 COCKENDE A/D  
SPECIFIC SECTION: 365-26 - CONSTRUCTION  
WITHOUT A PERMIT- TREE HOUSE

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<input type="checkbox"/>	\$25.00	\$50.00	\$100.00	\$250.00
<input type="checkbox"/>	\$35.00	\$70.00	\$140.00	\$250.00
<input type="checkbox"/>	\$50.00	\$100.00	\$250.00	\$500.00
<input type="checkbox"/>	\$75.00	\$150.00	\$250.00	\$500.00
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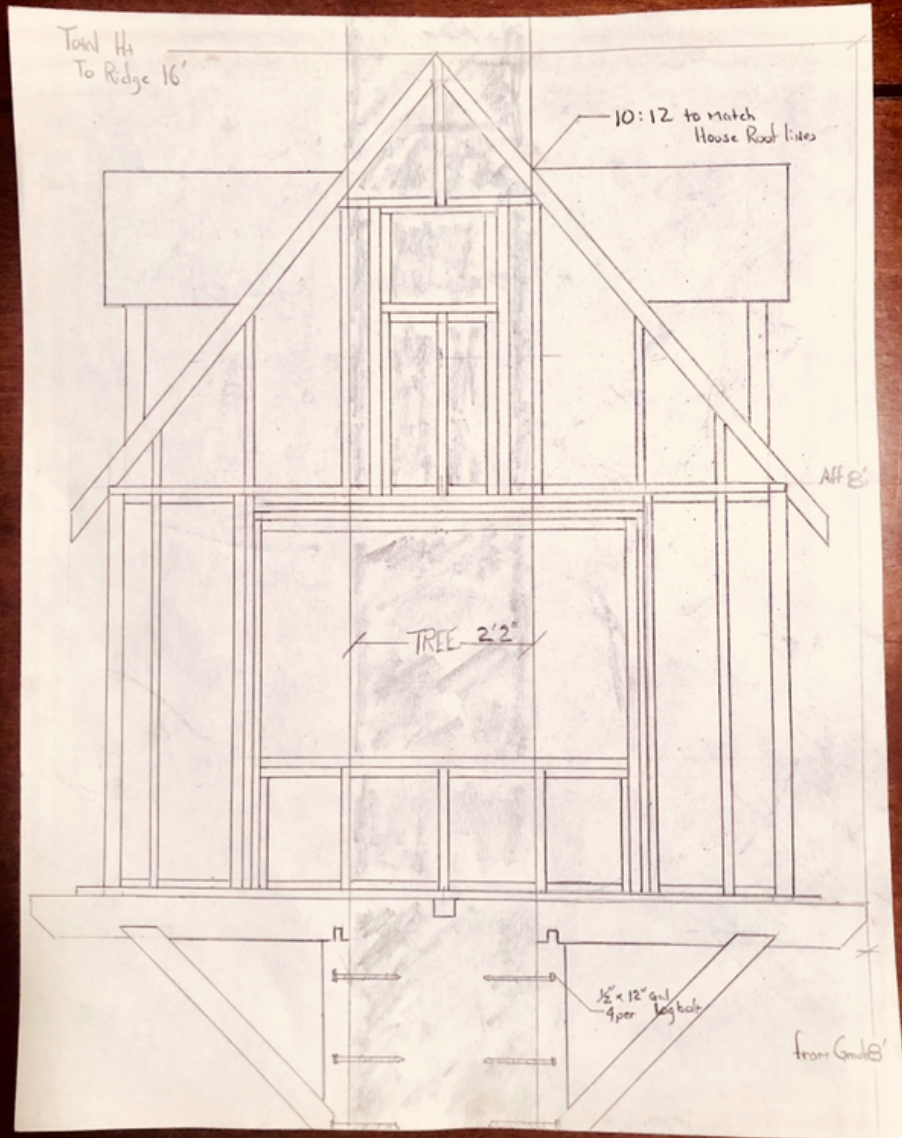
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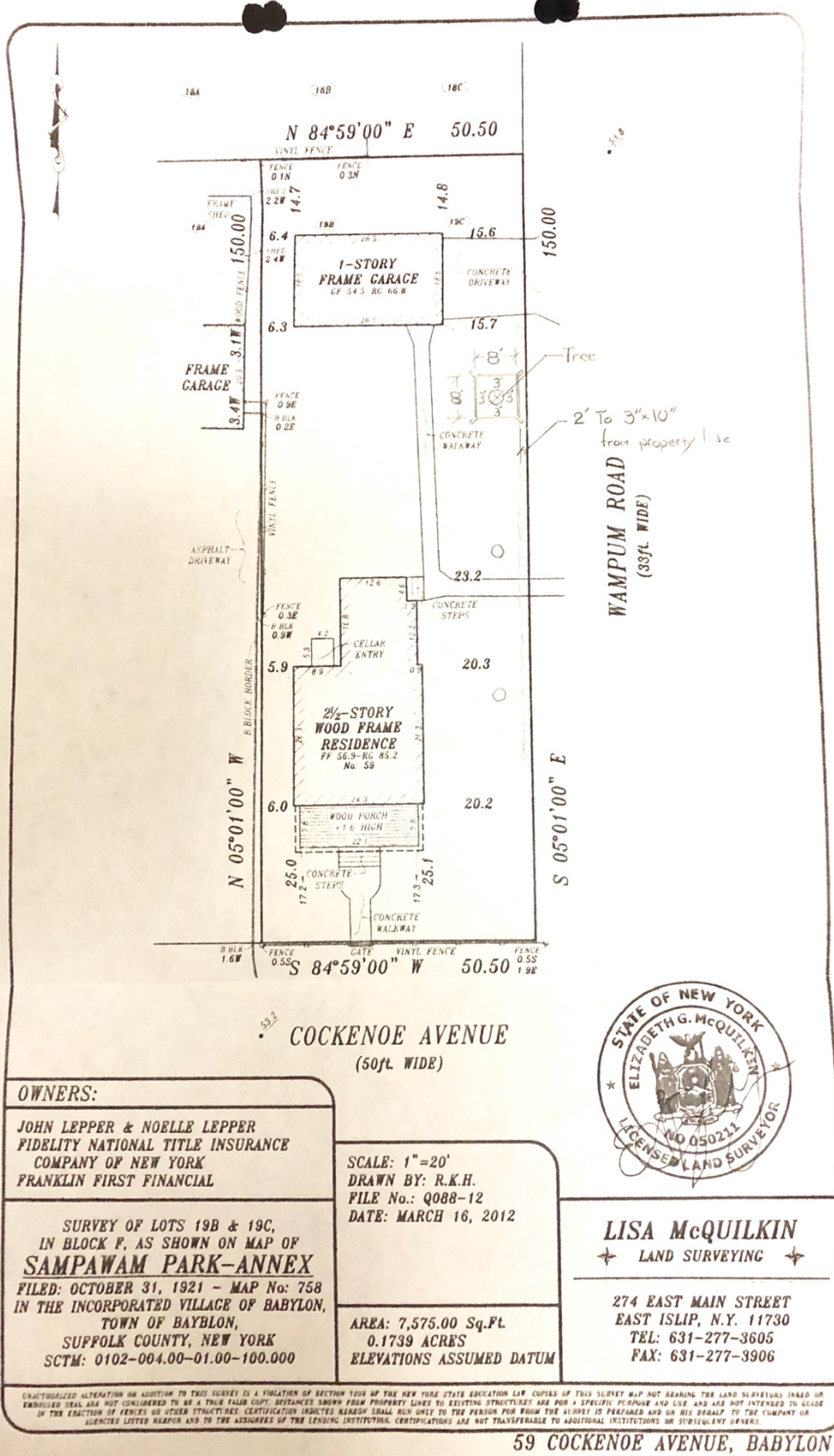
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

JOHN LEPPER and NOELLE LEPPER, individually  
and as parents and natural guardians of their  
infant children, B.J.L and B.I.,

Plaintiffs,

- against -

VILLAGE OF BABYLON; and, RALPH SCORDINO, Mayor,  
KEVIN MULDOWNEY, Deputy Mayor, ROBYN  
SILVESTRI, Village Trustee, TONY DAVIDA,  
Village Trustee, MARY ADAMS, Village Trustee;  
STEPHEN FELLMAN, Village of Babylon Building  
Inspector; SUZANNE SCHETTINO, Department of  
Public Works; GERARD GLASS, Esq., Village of  
Babylon Attorney; DEBORAH LONGO, Planning  
Board, Village of Babylon, each individually  
and in their official capacity, and John  
and/or Jane Doe, unnamed, unidentified  
complainants,

Defendants.

Index No.: 2:18-cv-07011 JFB-GRB

-----x

ANTHONY DAVIDA

135 Pinelawn Road  
Melville, New York

September 18, 2019  
10:04 a.m.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

30

1 ANTHONY DAVIDA

2 Q. So after one year, you went back  
3 to --

4 A. Engineering.

5 Q. -- engineering.

6 How long did you maintain that  
7 engineering job for?

8 A. To this day.

9 Q. You said that's a part-time  
10 position?

11 A. Well, now it is.

12 I retired let's see, 2007, I  
13 retired.

14 Q. When you retired in 2007, what,  
15 if anything, occurred to your position?

16 A. I went back two weeks, one day  
17 later part time.

18 Q. Who do you currently answer to in  
19 your position?

20 A. Gentleman is Scott Fish. He is  
21 the regional director of engineering.

22 Q. Sir, you currently live at  
23 83 Wyandanch; is that right?

24 A. Yes.

25 Q. That's in the Village of Babylon?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

31

1 ANTHONY DAVIDA

2 A. Yes.

3 Q. How long have you resided there?

4 A. Since 1961.

5 Q. Where did you live before that?

6 A. That, I can answer. 49 Nancy  
7 Street.

8 Q. Is 49 Nancy Street located in the  
9 Village of Babylon?

10 A. No. I don't know what that is,  
11 it's part of the Town of Babylon. I'm gonna  
12 say West Babylon. It's up near, near the  
13 landfill, the dump. I think it's West  
14 Babylon, it's East Farmingdale's Fire  
15 District, but I think it's West Babylon.

16 Q. How do you know it's East  
17 Farmingdale's Fire District?

18 A. I'm a member of the fire  
19 department, it's part of the Town of Babylon.

20 Q. At 83 Wyandanch, do you receive  
21 e-mail from the United States Postal Service  
22 at that address?

23 A. Yes.

24 Q. Do you maintain a landline at  
25 that address?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

62

1 ANTHONY DAVIDA

2 Q. Who was that?

3 A. About 40 people. I don't  
4 remember who. Everyone.

5 Q. In terms of elected officials?

6 A. In terms of elected officials,  
7 myself, Ralph Scordino, Mary Adams, and Kevin  
8 Muldowney, and Robyn Silvestri.

9 Q. Did any other elected official  
10 help you in their campaign?

11 A. No.

12 Q. Who else ran on the 2019 ballot?

13 A. It was myself, Ralph, Robyn  
14 Silvestri.

15 Q. Was that a contested election?

16 A. Nope.

17 Q. What was the result?

18 A. Hold on a second. It was  
19 contested. You know what it is, in my life, I  
20 got more important things to worry about. You  
21 know what I'm saying? Trying to remember  
22 who -- I don't know who -- leave that blank  
23 for now and I'll get the names for you.

24 Q. You have more important things to  
25 worry about --



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

63

1 ANTHONY DAVIDA

2 A. Yep.

3 Q. -- you weren't worried about the  
4 results of the political election?

5 MR. TOSCA: Objection.

6 A. Nope.

7 Q. Why not?

8 A. Because I do my job.

9 MR. TOSCA: Objection.

10 A. Whatever. I do my job and I do  
11 it proficiently.

12 Q. Was there literature passed  
13 around in that 2019 election?

14 A. Yes.

15 Q. What was on the literature?

16 A. Same in the past, photos of us,  
17 achievements, and the signing of the petition.

18 Q. In the course of your election  
19 campaigns, have you had occasion to walk the  
20 Village of Babylon and talk to residents in  
21 their homes?

22 A. Sure.

23 Q. When you appeared on the line in  
24 your election, what, if anything, appeared  
25 next your name?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

64

1 ANTHONY DAVIDA

2 A. What do you mean on lines?

3 Q. When persons went to vote for  
4 you --

5 A. Right.

6 Q. -- what, if anything, did they  
7 see aside from your name?

8 A. On the ballot?

9 Q. Um-hum.

10 A. Just the name.

11 Q. Was there ever a party nomination  
12 convention?

13 A. No.

14 Q. Have you ever been appointed to a  
15 position of Village government, whether paid  
16 or unpaid?

17 A. No.

18 Q. The only appointment that you  
19 have had was the one by Mayor Scordino; is  
20 that right?

21 MR. TOSCA: Objection.

22 A. Yes.

23 Q. At the time which you lived in  
24 the Village of Babylon, have you observed any  
25 tree houses?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

65

1 ANTHONY DAVIDA

2 A. No.

3 Q. During your last walk of your  
4 campaign or Village of Babylon --

5 Withdrawn.

6 As you sit here today, you have  
7 never seen a tree house in the Village of  
8 Babylon?

9 A. Other than the one we're  
10 discussing now.

11 Q. During the time in which you  
12 lived in the Village of Babylon, have you  
13 observed any tree houses?

14 A. I have to say yes if that's what  
15 you're looking for, yes.

16 Q. Which one?

17 A. The corner house on Wampum and  
18 Cockenoe.

19 Q. You are aware that there are more  
20 than just one tree house in the Village of  
21 Babylon?

22 A. I have.

23 Q. During your last walk of your  
24 campaign of the Village of Babylon trustee,  
25 did you see any tree houses within the Village

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

66

1 ANTHONY DAVIDA

2 of Babylon?

3 A. Yeah, the one on Cockenoe and  
4 Wampum.

5 Q. Did you see the other tree houses  
6 when you walked?

7 A. No.

8 Q. When you walked in the past for  
9 those many years, did you see any tree houses  
10 within the Village of Babylon?

11 A. The one on Cockenoe and Wampum.

12 Q. And no others?

13 A. No.

14 Q. When was the first time you saw a  
15 tree house at the Lepper property, the  
16 property which you refer to as --

17 A. The date, I don't remember.

18 Q. Do you remember the year?

19 A. Yeah. Last year sometime.

20 MR. MORRIS: It's 11:01, we'll  
21 give the court reporter a break.

22 (Whereupon, a recess was taken  
23 from 11:01 a.m. through 11:15 a.m.)

24 MR. MORRIS: Time, 11:15.

25 Q. Mr. Davida, did you remember



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

67

1 ANTHONY DAVIDA

2 something that you wanted to --

3 A. Yeah. Couple of names.

4 The fellow I worked with, the  
5 regional director at the time, his name was  
6 Frank Highland (phonetic), and then this past  
7 April, elections we had two other people, one  
8 ran for mayor, Hoffman, her name was Hoffman,  
9 and another ran for trustee, her name was  
10 Kolovich, and they lost.

11 Q. Mr. Davida, did you discuss your  
12 testimony during the break?

13 MR. TOSCA: Objection.

14 Don't answer that question.

15 MR. MORRIS: Are you asserting  
16 attorney/client privilege?

17 MR. TOSCA: I am.

18 Q. Mr. Davida, how did you remember  
19 that information from the time we broke to  
20 now?

21 A. Well, I called the Mayor's office  
22 to get the two girls that -- I knew they were  
23 women, they ran against us, and the other  
24 clicked in my head.

25 Q. When you say you called the

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

68

1 ANTHONY DAVIDA

2 Mayor's office, to whom did you speak?

3 A. Suzanne.

4 Q. Suzanne who?

5 A. Schettino.

6 Q. Who is she?

7 A. She's the Mayor's secretary.

8 Q. Do you have her direct line?

9 A. To the Mayor's office.

10 Q. Have you communicated with anyone  
11 else during the --

12 A. No.

13 MR. TOSCA: Let him finish.

14 THE WITNESS: Sorry. I  
15 apologize.

16 Q. How did you communicate with  
17 Ms. Schettino?

18 A. Called her.

19 Q. Which number did you dial?

20 A. 631-669-1212.

21 Q. What number is that to?

22 A. Directly to the Mayor's office.

23 She answers the phone.

24 Q. Was the Mayor present?

25 A. I don't know.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

69

1 ANTHONY DAVIDA

2 Q. Before we broke we were talking  
3 about your walking the Village.

4 When you walked the Village for  
5 campaigns, where did you walk?

6 A. South of Montauk, all the south  
7 streets south of Montauk.

8 Q. Did you walk the entire Village?

9 A. No.

10 Q. Did you split it up or --

11 A. Different areas, yeah.

12 Q. You lived in the Village for over  
13 50 years; is that right?

14 A. I lived in the Village since  
15 1961.

16 Q. Same house that you said your  
17 father built?

18 A. Well, I took the house over in  
19 '85, somewhere around there, and when I first  
20 got married, I lived in an apartment.

21 Q. Just to be clear, we went through  
22 where you lived. Aside from Nancy and aside  
23 from Wyandanch, have you lived anywhere else,  
24 and aside New York City, have you lived  
25 anywhere else?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

70

1 ANTHONY DAVIDA

2 A. Yeah. I had two different  
3 apartments.

4 Q. Just to be clear, I'm asking you  
5 these questions under oath and I'm seeking to  
6 have the answers to these questions.

7 Where were these apartments?

8 A. One was on Pine Street in the  
9 Village, and the other was on Locust Avenue in  
10 the Village.

11 Q. When you say in the Village --

12 A. Village of Babylon.

13 Q. When did you live at Pine Street?

14 A. '76 to '78.

15 Q. With whom did you live at Pine  
16 Street?

17 A. With who? My wife.

18 Q. Anyone else?

19 A. My daughter.

20 Q. Why didn't you live at  
21 83 Wyandanch?

22 A. Because my father had the house,  
23 he was still alive.

24 Q. Did there come a time you moved  
25 out of Pine Street?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

71

1 ANTHONY DAVIDA

2 A. Yeah.

3 Q. You maintained a landline at Pine  
4 Street?

5 A. Yes.

6 Q. What was the number at that  
7 location?

8 A. I don't know.

9 Q. When there came a time that you  
10 moved out of Pine Street, where did you go?

11 A. Wyandanch Avenue, 83.

12 Q. Have you been living continuously  
13 at 83 Wyandanch in the Village of Babylon  
14 since 1983?

15 A. I would say yes.

16 Q. You said Locust in the Village of  
17 Babylon.

18 A. Locust Avenue.

19 Q. When did you live on Locust  
20 Avenue?

21 A. From '74 to '76.

22 Q. With whom, if anyone, did you  
23 live on Locust Avenue?

24 A. My wife and my daughter.

25 Q. Why did you move from Pine Street

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

72

1 ANTHONY DAVIDA

2 the Locust Avenue?

3 A. We were at Locust first.

4 Q. Why did you move from Locust to  
5 Pine Street?

6 A. Rent was up and they raised it,  
7 the lease was up.

8 Q. Did you maintain a landline at  
9 Locust Avenue, Village of Babylon?

10 A. Yes.

11 Q. What was the number?

12 A. Don't know

13 MR. TOSCA: Objection.

14 Q. So you lived in the Village of  
15 Babylon for over 50 years continuously; is  
16 that right?

17 A. Yes.

18 Q. And you've never seen a tree  
19 house before John Lepper's, right?

20 A. Nope.

21 MR. TOSCA: Objection.

22 Q. So this was the first time you  
23 have ever seen a tree house in your life?

24 A. No.

25 Q. When was the other time you've



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

73

1 ANTHONY DAVIDA

2 ever seen a tree house?

3 A. I've seen them upstate, I've seen  
4 them in different locations.

5 Q. Where have you seen them?

6 A. I don't remember. You know, I  
7 travel upstate.

8 Q. When was the first time you saw  
9 the Lepper family tree house?

10 A. About a year ago, year and a half  
11 ago when it first started.

12 Q. When you say it first started, to  
13 what are you referring?

14 A. Construction.

15 Q. When you say construction first  
16 started, what is it that you saw?

17 A. I saw the timbers, the framework  
18 bolted to the tree.

19 Q. When did you see that?

20 A. Year and a half ago. I don't  
21 remember.

22 Q. You realize we're here for a  
23 federal lawsuit involving the tree house?

24 MR. TOSCA: Objection.

25 A. I understand that, but you got to

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

74

1 ANTHONY DAVIDA

2 understand --

3 MR. TOSCA: Objection.

4 Q. You don't remember when you saw  
5 the framework of the tree house?

6 A. The date no.

7 Q. Do you remember the month?

8 A. No.

9 Q. Do you remember the year?

10 A. Over a year ago.

11 Q. Do you remember which year that  
12 was?

13 A. '18.

14 Q. 2018.

15 Where were you when you saw the  
16 framework for this tree house?

17 A. Driving by his house.

18 Q. In which direction were you  
19 traveling?

20 A. South.

21 Q. Where were you coming from and  
22 where were you going?

23 A. Coming from, coming home and  
24 going to the firehouse.

25 Q. When you say home, it was 83 --



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

75

1 ANTHONY DAVIDA

2 A. Wyandanch Avenue, yes.

3 Q. What time of day was it?

4 A. I don't remember.

5 Q. When you say going to the  
6 firehouse, for what reason were you going to  
7 the firehouse?

8 A. To do some work.

9 Q. What work were you going to do?

10 A. Clean the trucks. I don't  
11 remember.

12 Q. What, if anything, did you do  
13 when you saw the framework of the tree house?

14 A. I was surprised. I was shocked.

15 Q. When you say surprised and  
16 shocked --

17 A. Yeah.

18 Q. -- why were you surprised and  
19 shocked?

20 A. I never expected to see it.

21 Q. Why not?

22 A. Just it cropped up in the  
23 Village, I just saw it. I was surprised.

24 Q. Is there something about a tree  
25 house that surprises you?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

76

1 ANTHONY DAVIDA

2 A. Yeah.

3 Q. What is that?

4 A. In such an area, it's -- you  
5 don't expect it.

6 Q. When you say such an area, to  
7 what --

8 A. A residential area.

9 Q. Why didn't you expect tree houses  
10 in residential areas?

11 A. I just don't expect it.

12 Q. The location was in your car. On  
13 which side of the road were you on?

14 A. Center of the road, these are  
15 residential narrow roads.

16 Q. What road were you traveling on?

17 A. Wampum Road.

18 Q. With direction were you heading?

19 A. South.

20 Q. As you were on Wampum Road  
21 heading south, what, if anything, did you do  
22 in response to the surprise and shock that you  
23 experienced when you saw this framework?

24 A. I saw it and kept on going.

25 Q. What, if anything, did you do



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

77

1 ANTHONY DAVIDA

2 next?

3 A. Next I called the Village board,  
4 the Building Department.

5 Q. To whom did you speak?

6 A. I don't remember. Debbie Longo.  
7 I'm not sure who.

8 Q. What did you say?

9 A. I told 'em that somebody should  
10 take a look, there is a tree house or what  
11 appears to be a tree house being built.  
12 There's these large timbers framed on the  
13 tree. That's all. I reported it to the  
14 Building Department.

15 Q. What did you report?

16 A. What I just said. I just told  
17 them there's timbers being bolted to a tree.

18 Q. Anything in violation of the  
19 Babylon Village code?

20 A. I don't know. You would have to  
21 check with the Building Department.

22 Q. What time did you call Deborah  
23 Longo?

24 A. I don't remember.

25 Q. What phone did you use to call

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

78

1 ANTHONY DAVIDA

2 her?

3 A. My cell phone.

4 Q. When you called Deborah Longo,  
5 what, if anything, did she say?

6 A. She said she would have somebody  
7 take a look at it.

8 Q. Anything else?

9 A. No, that was it.

10 Q. What else, if anything, occurred  
11 that day?

12 A. That's it.

13 Q. Did you ever speak to Mr. Lepper?

14 A. Nope.

15 Q. Aside from making that phone  
16 call, what, if anything, occurred?

17 A. That I know of, nothing that I  
18 know of, other than the Building Department  
19 was handling it now.

20 Q. So you drove by in your car when  
21 you saw this object; is that correct?

22 A. Yes.

23 Q. And you don't know what time of  
24 day it was?

25 A. Don't remember.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

79

1 ANTHONY DAVIDA

2 Q. Do you remember the weather  
3 conditions that day?

4 A. I don't remember. I mean, it was  
5 nice out, I could see it. It was clear as  
6 day, so I would assume it would be sunny.

7 Q. Was it a weekday?

8 A. Don't remember.

9 Q. A holiday?

10 A. Don't remember.

11 Q. Do you remember what car you were  
12 driving?

13 A. Yeah.

14 Q. What kind of car were you  
15 driving?

16 A. Chevy Impala.

17 Q. How did you make the phone call?

18 A. When I got to the firehouse, I  
19 went inside and made the phone call.

20 Q. Using your cellular phone?

21 A. Yes.

22 Q. You never stopped?

23 A. No.

24 Q. When you said firehouse, where  
25 was the firehouse?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

80

1 ANTHONY DAVIDA

2 A. Cedar Street.

3 Q. How far was the firehouse from  
4 your house?

5 A. Let's see, one, two, three, four,  
6 five, six, seven, about nine blocks away,  
7 nine, ten blocks.

8 Q. So driving those nine blocks,  
9 nothing else happened throughout that time?

10 A. No.

11 Q. So it was during the day?

12 A. Yeah.

13 Q. Anything else that you remember  
14 about that time that you saw timbers in the  
15 tree where you are surprised and shocked?

16 A. Yeah, nothing else.

17 Q. Just to be clear, you were  
18 shocked when you saw timbers in the tree?

19 A. Yeah, it was a surprise.

20 Q. Have you never seen timbers in a  
21 tree before?

22 A. Not In the Village.

23 Q. When you say not in the Village,  
24 you have seen them in other places?

25 A. Yeah, upstate.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

81

1 ANTHONY DAVIDA

2 Q. When you say upstate, where?

3 A. Driving through different  
4 villages, towns. I'm not sure which ones.

5 Q. So you have seen timbers in trees  
6 driving upstate through different towns, but  
7 not in the Village of Babylon?

8 A. Yeah. Hunting stands, tree  
9 stands.

10 Q. When you say upstate, where  
11 upstate?

12 A. Anywhere upstate, New York, upper  
13 New York, Catskills.

14 Q. Do you recall the township?

15 A. No.

16 Q. Do you recall having that sort of  
17 shock when you saw it upstate?

18 A. No.

19 Q. And you weren't shocked when you  
20 saw these sorts of things upstate. Correct?

21 A. No.

22 Q. Why?

23 A. I would expect it up there.

24 Q. Why would you expect it up there  
25 and not --

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

82

1 ANTHONY DAVIDA

2 A. Because that's where you build  
3 tree houses and stuff.

4 Q. But you don't build tree houses  
5 in the Village of Babylon, do you?

6 A. I don't know.

7 Q. So why were you shocked?

8 A. Because I didn't expect to see  
9 it.

10 Q. Again, you were shocked because  
11 you saw timbers in a tree, correct?

12 A. Um-hum.

13 Q. But you're not shocked when you  
14 see the same timbers in a tree upstate?

15 A. No.

16 Q. What is different about upstate  
17 and the Village of Babylon?

18 MR. TOSCA: Objection.

19 You can answer.

20 A. Upstate is built on 20, 30  
21 acres of property.

22 Q. Is it the acreage that shocks  
23 you?

24 A. Sure, that's part of it. I mean,  
25 it is what it is. I mean, upstate, New York



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

114

1 ANTHONY DAVIDA

2 said you never use?

3 A. Right.

4 Q. At any time did you discuss the  
5 summons that were issued to Mr. Lepper with  
6 any other member of the Village of Babylon  
7 board?

8 A. Sure.

9 Q. When?

10 A. Past months, six months, eight  
11 months.

12 Q. Did you discuss it prior to eight  
13 months?

14 A. I really can't remember, you  
15 know, exactly when, you know, I'm just saying  
16 months back.

17 Q. Was it before or after you were  
18 served notice of this lawsuit?

19 A. Probably before.

20 Q. Under what circumstances did you  
21 discuss these summonses before?

22 A. Just by getting information,  
23 feedback from the Building Department and the  
24 Village attorney.

25 Q. Is this in public or in private?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

115

1 ANTHONY DAVIDA

2 A. Public.

3 Q. Where in public?

4 A. Village Hall, the conference room  
5 upstairs.

6 Q. Were these public meetings or  
7 private meetings?

8 A. They were open to the public.

9 Q. During such meetings that were  
10 open to the public, what discussions were had?

11 A. Again, regarding about the fines  
12 and the stop orders and you know, just an  
13 ongoing situation where there's fines after  
14 fines after fines, stop order on the job and,  
15 you know, the conversation is, you know, where  
16 are we going, what are we doing, you know, why  
17 doesn't he want to comply. Stuff like that.

18 Q. Start with before be lawsuit.  
19 What was said and by whom?

20 A. I don't remember.

21 Q. What did you say in response?

22 A. I don't remember the  
23 conversations, who said what. You know, I  
24 agreed with them, you know.

25 Q. Who is them?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

120

1 ANTHONY DAVIDA

2 had last week, two weeks, three weeks ago?

3 Yeah.

4 Q. Do you recall that?

5 A. Yeah.

6 Q. Anything happen during that  
7 storm?

8 A. Yeah. A lot of trees came down.

9 Q. Any trees come down on your  
10 house?

11 A. No.

12 Q. Did the tree house come down?

13 A. Nope.

14 Q. You recall that?

15 A. Still there.

16 Q. Because you can see it.

17 A. Absolutely.

18 Q. And you can perceive it?

19 A. Um-hum.

20 Q. You can recall its occurrence,  
21 correct?

22 A. Yeah.

23 MR. TOSCA: Objection.

24 Q. And if I ask you questions about  
25 it, you will tell me. Correct?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

123

1 ANTHONY DAVIDA

2 this needs to be finished.

3 MR. TOSCA: I'm going to object  
4 when you're badgering the witness.

5 Q. Sir, I'm asking you when you have  
6 been sued in terms of a month.

7 Do you recall the month in which  
8 you were sued?

9 A. No.

10 Q. Do you recall the year in which  
11 you were sued?

12 A. I'm going to say 2018.

13 Q. Do you recall if it was at the  
14 beginning of the year or the end of the year?

15 A. Don't remember.

16 Q. Do you recall anyone ever asking  
17 you for electronic mailings as a result of  
18 this lawsuit?

19 A. No.

20 Q. Do you recall anyone asking you  
21 for your text messages as a result of this  
22 lawsuit?

23 A. No.

24 Q. As you sit here today, have you  
25 given over either electronic mails or text



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

135

1 ANTHONY DAVIDA

2 A. No.

3 Q. Aside from the Village of Babylon  
4 board or its attorney, has anyone ever  
5 communicated to in fashion, telephone, e-mail,  
6 face-to-face conversation about this Lepper  
7 family tree house?

8 A. Yes.

9 Q. Who?

10 A. The one neighbor across the  
11 street, I think he lives.

12 Q. What's the name of that man?

13 A. Terry McSweeney.

14 Q. When did that conversation with  
15 Terry McSweeney occur?

16 A. I have no idea.

17 Q. Do you know what year it  
18 occurred?

19 A. Last year or this year. I don't  
20 remember.

21 Q. Did it occur in 2017?

22 MR. TOSCA: Objection.

23 A. Obviously 2018.

24 Q. Do you recall the month in which  
25 it occurred?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

148

1 ANTHONY DAVIDA

2 Q. Do you know recall to whom you  
3 spoke three weeks ago?

4 A. I believe it was Debbie Longo.

5 Q. Did you speak to anyone else in  
6 regards to new timbers -- and you saw no  
7 building permit, correct?

8 A. Yeah, no building permit.

9 Q. How do you know that there was no  
10 building permit?

11 A. You're supposed to put it in the  
12 window in the front.

13 Q. How did you know there was no  
14 permit in the window?

15 A. When I drove by, I didn't see it.

16 Q. Did you stop?

17 A. Slow drive because there was a  
18 traffic light four houses up, four buildings  
19 up.

20 Q. What was that house?

21 MR. TOSCA: Objection.

22 There may be an ongoing  
23 investigation, so I'm going to object to  
24 the characterization or identification.

25 Q. What street were you driving?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

149

1 ANTHONY DAVIDA

2 A. Willow.

3 MR. TOSCA: Objection.

4 Q. What direction were you driving?

5 A. North.

6 Q. Was the house on the left-hand  
7 side or right-hand side?

8 A. Right-hand side.

9 MR. TOSCA: Objection.

10 Q. What was the cross street as you  
11 approached the right-hand side of Willow?

12 A. Montauk Highway.

13 Q. So it was before Montauk Highway.  
14 Correct?

15 MR. TOSCA: Objection.

16 A. Yes.

17 Q. Did you have opportunity to look  
18 in the window?

19 A. I drove by.

20 Q. Is it possible that you missed  
21 the permit?

22 A. No.

23 Q. How do you know that?

24 A. Because later on, the Building  
25 Department told me they had no building permit

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

150

1 ANTHONY DAVIDA

2 and they put a stop order on the job.

3 Q. And you communicated with the  
4 Building Department?

5 A. Later on, a few days later, four,  
6 five days later.

7 Q. And in doing so, you reported a  
8 violation. Correct?

9 MR. TOSCA: Objection.

10 A. Yeah.

11 Q. You have done that in the past?

12 MR. TOSCA: Objection.

13 A. Probably, yeah. I don't  
14 remember.

15 Q. Probably, is it yes, is it no, do  
16 you not know?

17 A. You know what, I don't know.

18 Q. Is there anything that prevents  
19 you from knowing whether or not you reported  
20 something to Village of Babylon?

21 A. No.

22 Q. Did you do that as Village of  
23 Babylon trustee or something else?

24 MR. TOSCA: Objection.

25 A. Trustee.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

151

1 ANTHONY DAVIDA

2 Q. So when you make these reports,  
3 you do it as the Village of Babylon trustee.  
4 Correct?

5 MR. TOSCA: Objection.

6 You can answer.

7 A. Yes.

8 Q. That's what you did to John  
9 Lepper, right?

10 MR. TOSCA: Objection.

11 You can answer.

12 A. Yes.

13 Q. And Deborah Longo.

14 Who is Deborah Longo?

15 A. She's in charge of the Building  
16 Department.

17 Q. What does she do for the Building  
18 Department of the Village of Babylon?

19 A. Yep. I don't know.

20 Q. When you say you don't know --

21 A. Her office does not come under  
22 me, so I don't know.

23 She handles building permits,  
24 zoning, planning, all different stuff  
25 pertinent to the buildings and residents in

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

152

1 ANTHONY DAVIDA

2 the Village.

3 Q. How long has Deborah Longo worked  
4 for the Village of Babylon?

5 A. Good 12 years, I'd say, if not,  
6 longer.

7 Q. Sir, you were appointed trustee  
8 in 2002 in the Village of Babylon?

9 A. Yes.

10 Q. And Deborah Longo has been there  
11 for 12 years, correct?

12 A. Yep.

13 Q. You don't know what she does.

14 A. I just told you, she handles  
15 building permits, planning and zoning and  
16 violations.

17 I don't go into depth of what she  
18 does.

19 Q. Do you know what her job title  
20 is?

21 A. No.

22 Q. Do you know where she physically  
23 sits within the Village of Babylon?

24 A. Yep.

25 Q. Where?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

153

1 ANTHONY DAVIDA

2 A. In the Building Department.

3 Q. Is the first floor, second floor?

4 A. Second floor.

5 Q. Does she have her own office?

6 A. It's one large office.

7 Q. Who else is in the office in  
8 which Deborah Longo sits?

9 A. Steve Fellman and one, two --  
10 about four other women and the, one of the  
11 Village code enforcement that inspects  
12 apartments, and the other one is the one he  
13 goes out when Debbie gets a report and he goes  
14 to see, like this house we were just talking  
15 about, he'll go and see if there is a building  
16 permit. Well, they look in the file first and  
17 then they'll go out and tell the people they  
18 got to stop and get a building permit.

19 Q. What are the names of the persons  
20 you mentioned, aside from Stephen Fellman and  
21 Deborah Longo that sit in that large room?

22 A. Code enforcement does the  
23 apartments is Richie Meier, M-E-I-E-R. The  
24 other one that does the inspections on the  
25 homes for permits and stuff, his name is Ray,

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

154

1 ANTHONY DAVIDA

2 I don't know his last name. Marietta and  
3 Jeannie, I think.

4 Q. Is Deborah Longo an elected or  
5 appointed official?

6 A. Appointed.

7 Q. Who appointed Deborah Longo?

8 A. The Mayor.

9 Q. Which mayor is that?

10 A. Ralph Scordino.

11 Q. How long has Deborah Longo worked  
12 for the Village of Babylon?

13 A. About 12 years. I don't know  
14 exactly when she came onboard.

15 Q. Is she civil service protected?

16 MR. TOSCA: Objection.

17 You can answer.

18 A. I don't know. I have no idea.

19 Q. How long has Deborah Longo been  
20 an employee of the Village of Babylon?

21 A. I just told you that. About 12  
22 years ago. I don't know exactly how long.

23 Q. Aside from her sitting in the  
24 position in which she sits, her being Deborah  
25 Longo, do you know if she ever worked in any



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

155

1 ANTHONY DAVIDA

2 other portion of Village of Babylon?

3 A. No.

4 Q. When did you first become  
5 aware of Deborah Longo's existence?

6 A. When she was brought onboard.

7 Q. When was that?

8 A. About 12 years ago or so. I'm  
9 not sure.

10 Q. Under what circumstances did you  
11 learn that Deborah Longo was being brought  
12 onboard?

13 A. I was introduced to her as the  
14 person in charge of the Building Department.

15 Q. Who introduced you?

16 A. Ralph Scordino, the Mayor.

17 Q. That's to whom she reports to  
18 within the Village of Babylon, correct?

19 A. Yes.

20 MR. MORRIS: For the sake of our  
21 court reporter, I'm going to take a  
22 break.

23 It's 12:30 p.m.

24 (Whereupon, a recess was taken  
25 from 12:30 p.m. through 1:19 p.m.)

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

156

1 ANTHONY DAVIDA

2 MR. MORRIS: Time now is 1:19.

3 We're back on the record.

4 Q. Mr. Davida, are you sure that you  
5 were the one who initiated the complaint  
6 regarding the Lepper family tree house to  
7 Deborah Longo?

8 MR. TOSCA: Objection.

9 You can answer over objection.

10 A. I don't know if I'm the first one  
11 or only one. I have no idea. I saw what I  
12 saw and reported it.

13 Q. As you sit here today, do you  
14 know whether anyone made complaints after you  
15 did about the Lepper family tree house in the  
16 Village of Babylon?

17 A. No, I don't.

18 Q. As you sit here today, no one  
19 else had made complaints aside from you; is  
20 that right?

21 MR. TOSCA: Objection.

22 A. I don't know.

23 Q. Are you aware whether Mayor  
24 Scordino received several complaints from the  
25 Village of Babylon residents?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

157

1 ANTHONY DAVIDA

2 MR. TOSCA: Objection.

3 You can answer over objection.

4 A. I don't know.

5 Q. Have you ever heard Mayor  
6 Scordino say that this is quote, no ordinary  
7 tree house tucked away in someone's backyard  
8 end quote?

9 A. No.

10 Q. You never heard him say that?

11 A. No.

12 Q. You ever see him write that?

13 A. No.

14 Q. Have you ever been explained by  
15 anyone that the Lepper family tree house was  
16 nearly 100 square feet?

17 A. I saw some paperwork that the  
18 Leppers put it that it was under -- what is  
19 it -- 86 square feet or something like that?

20 Q. Can you explain to what you're  
21 referring?

22 A. That he doesn't need a permit, I  
23 believe it was.

24 Q. What forms your basis for that?

25 A. I didn't say that. Lepper said

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

158

1 ANTHONY DAVIDA

2 that.

3 Q. What forms your basis for this  
4 explanation as to paperwork?

5 A. He submitted a drawing and said  
6 it was under 86 square feet or something.

7 Apparently, there is a building  
8 code that you don't need a permit under a  
9 certain size.

10 Again, I'm not familiar with the  
11 codes.

12 Q. When did you first receive or  
13 review this paperwork from Mr. Lepper?

14 A. Oh God, a year ago probably when  
15 he was trying to submit it.

16 Q. When you say trying to submit  
17 it --

18 A. He had -- he was trying to submit  
19 papers to the planning board and he didn't  
20 have anything stamped, certified by an  
21 engineer, so they rejected it.

22 Q. When was this?

23 A. I don't know.

24 Q. What month?

25 A. Maybe a year ago.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

159

1 ANTHONY DAVIDA

2 Q. Who rejected it?

3 A. I would assume the Building  
4 Department because that's where it would go  
5 to, the Building Department.

6 Q. When you say Building Department,  
7 who was the person who did the review?

8 A. I would say Steve Fellman, he's  
9 the inspector.

10 Q. To be clear, Mr. Lepper submitted  
11 plans to legitimize the tree house --

12 A. He submitted it --

13 I'm sorry. Go ahead.

14 Q. To be clear, Mr. Lepper submitted  
15 plans to legitimize the tree house, and  
16 Mr. Fellman said those plans were no good?

17 MR. TOSCA: Objection.

18 You can answer.

19 A. He submitted drawings, not plans,  
20 drawings, handwritten drawings.

21 Q. What occurred with those  
22 handwritten drawings?

23 A. They went to the Building  
24 Department, and I'm assuming at that point,  
25 the inspector Steve Fellman rejected it.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

160

1 ANTHONY DAVIDA

2 Q. How did Mr. Fellman do that?

3 A. I don't know. That's his  
4 department.

5 Q. As you sit here today, do you  
6 know whether those papers were rejected?

7 A. To my knowledge, yes, they were.

8 Q. How do you know that?

9 A. They didn't have a certification  
10 stamp on it, the seal.

11 Q. How do you know that?

12 A. By what we were told.

13 Q. Who told you?

14 A. I think Steve Fellman told Gerry  
15 Glass, the Mayor. I'm not sure.

16 Q. How did you learn of this?

17 A. By word of mouth.

18 Q. By whose mouth?

19 A. Could have been Gerard Glass,  
20 could have been the board members, could have  
21 been Steve Fellman. I don't remember.

22 Q. One of those persons?

23 A. I would say I think so, yeah.

24 Q. As you sit here today, you can't  
25 recall?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

167

1 ANTHONY DAVIDA

2 Q. Do you recall what month that  
3 occurred?

4 A. No.

5 Q. Do you recall any of the  
6 circumstances about that conversation?

7 A. No.

8 Q. Do you recall whether it was face  
9 to face or something else?

10 A. Probably face to face in  
11 conversation.

12 Q. Do you recall if it was at a  
13 board meeting or something else?

14 A. No, I don't remember.

15 Q. Do you recall if Mr. Scordino  
16 said that just to you or to everybody?

17 MR. TOSCA: Objection.

18 You can answer.

19 A. I would say probably with the  
20 board members.

21 Q. Anybody aside from the board  
22 members present for that conversation?

23 A. No.

24 Q. Do you recall anything else about  
25 that conversation?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

168

1 ANTHONY DAVIDA

2 A. No.

3 Q. Do you recall if you were sitting  
4 down or standing up when you heard that?

5 A. I would probably say sitting  
6 down.

7 Q. But you can't recall?

8 A. No.

9 Q. There's nothing I can do to  
10 refresh your recollection?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. No.

14 Q. Mayor Scordino ever tell you  
15 quote, the homeowner chose to build this tree  
16 house without getting the proper permit end  
17 quote?

18 MR. TOSCA: Objection.

19 You can answer.

20 A. I didn't hear him say that.

21 Q. Has he ever communicated it to  
22 you in any fashion?

23 A. Regarding what?

24 Q. Regarding the safety of the tree  
25 house?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

169

1 ANTHONY DAVIDA

2 A. Right.

3 Q. You said you never had tree house  
4 before, right?

5 A. Safety, we have all discussed  
6 safety issues.

7 Q. Never had a tree house in the  
8 Village of Babylon, right?

9 MR. TOSCA: Objection.

10 You're badgering the witness.

11 You can answer.

12 Q. Never had a tree house, right?

13 A. I was waiting for you to finish.  
14 I didn't know if you were finished.

15 Not that I know. I have never  
16 seen one.

17 Q. Fifty years in the Village of  
18 Babylon, never seen one?

19 A. Nope.

20 Q. Someone's talking about the  
21 safety of the tree house, you can't recall  
22 anything surrounding that incident. Correct?

23 A. What incident?

24 Q. Fifty year in the Village of  
25 Babylon without a tree house and you can't

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

170

1 ANTHONY DAVIDA

2 recall anything regarding that conversation?

3 MR. TOSCA: Objection.

4 You can answer.

5 A. We discussed safety issues, yes.

6 Q. What, if anything, did you say in  
7 response?

8 MR. TOSCA: Objection.

9 A. It was no -- a straight ladder up  
10 there, you know, concerns, what property, on  
11 the property, kid falls out, lands on dirt,  
12 break his neck, kill the kid, what else, we  
13 don't know.

14 Q. That's what you said?

15 A. To those words maybe. I don't  
16 recall.

17 Q. When did you say that?

18 A. A year ago, I guess. You know,  
19 again I don't know when these conversations  
20 occurred.

21 Q. So you can't give me any month,  
22 date, any recollection, snow on the ground,  
23 nothing.

24 You just remember you said it,  
25 that's it, right?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

171

1 ANTHONY DAVIDA

2 A. Right.

3 MR. MORRIS: Can I ask you to  
4 mark this, please.

5 (Whereupon, a letter from the  
6 Mayor about tree houses and other things  
7 was marked as Plaintiff's Exhibit 1 for  
8 identification as of today's date.)

9 Q. Review that and please take your  
10 time, Mr. Davida. Make sure you've read  
11 everything.

12 A. (Witness complies.)

13 Q. Mr. Davida, have you read  
14 Plaintiff's Exhibit 1?

15 A. Just now.

16 Q. Have you ever seen what's been  
17 marked as Plaintiff's Exhibit 1 prior to  
18 today?

19 A. Vaguely on, I believe, it's our  
20 newsletter. It says happy holidays, I'm  
21 assuming it's the Christmas, winter letter  
22 that goes out.

23 Q. When did you first see what's  
24 been marked as Plaintiff's Exhibit 1?

25 A. I guess when the newsletter came

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

172

1 ANTHONY DAVIDA

2 out.

3 Q. How did you receive the  
4 newsletter?

5 A. We get it upstairs in the office.

6 Q. When you say "we" --

7 A. The trustees.

8 Q. When you say "newsletter," is it  
9 printed?

10 A. Yes.

11 Q. Who prints it?

12 A. We have a company that, a woman  
13 that takes care of it. She puts letters,  
14 updates of what's going on, special events  
15 that are coming up.

16 Q. You said you got this when?

17 A. I'm saying probably before the  
18 holidays of 2018.

19 Q. Was there anything other than  
20 this letter that's been marked as Plaintiff's  
21 Exhibit 1 in that newsletter?

22 A. Regarding the tree house?

23 Q. Anything.

24 A. In the newsletter, yes. Yeah.

25 Yeah.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

173

1 ANTHONY DAVIDA

2 Q. And the full newsletter is  
3 distributed how?

4 A. By mail.

5 Q. Do you know who receives the  
6 newsletter?

7 A. The residents.

8 Q. Do you know which residents? Is  
9 it the entire village?

10 A. Yes.

11 Q. So everyone in the Village of  
12 Babylon receives the newsletter?

13 A. Yeah. If you have a mailing  
14 address, you get one.

15 Q. For that matter, was it signed by  
16 Mayor Scordino?

17 A. I don't know. I have no idea.

18 Q. Have you received a copy of this  
19 newsletter?

20 A. Yes.

21 Q. It was produced by the Village of  
22 Babylon Mayor Ralph Scordino, right?

23 A. Yes.

24 Q. It was maintained by the Village  
25 of Babylon, correct?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

174

1 ANTHONY DAVIDA

2 A. Yes.

3 Q. It was produced by the Village of  
4 Babylon. Correct?

5 A. Yes.

6 Q. Sent the letter by the Village of  
7 Babylon. Correct?

8 A. Yes.

9 Q. Is this a true and accurate copy  
10 of what you saw?

11 MR. TOSCA: Objection.

12 You can answer.

13 A. I would have to say reading it,  
14 yeah, it's -- it looks pretty accurate. I  
15 don't remember exactly because it's been so  
16 long ago.

17 Q. But this refreshes your  
18 recollection?

19 A. Yes.

20 Q. And you received this. Right?

21 A. Yes.

22 Q. You read this. Right?

23 A. Yep.

24 Q. Did you receive this at your  
25 house as well?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

175

1 ANTHONY DAVIDA

2 A. I would probably say yes.

3 Q. I'm just asking --

4 A. Yeah. Yeah.

5 Q. Do you remember seeing this?

6 A. I throw it in the garbage. I  
7 don't read it, but yeah, we got it.

8 Q. You remember receiving it?

9 A. Yeah.

10 Q. When you saw it, did you read it?

11 A. No. At home, no.

12 Q. When you saw it as a trustee, did  
13 you read it?

14 A. Yes.

15 Q. You knew it came from the Mayor  
16 correct?

17 A. Um-hum.

18 Q. When the Mayor said, from time to  
19 time, I have used this page to comment on  
20 matters of interest here in the Village, what  
21 is he referring to?

22 A. You have to ask him. I don't  
23 know.

24 Q. Have to ask the Mayor?

25 A. I don't know. I don't know. He

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

176

1 ANTHONY DAVIDA

2 wrote this, not me.

3 Q. I'd have to ask the Mayor of the  
4 Village of Babylon, correct?

5 A. Yeah.

6 Q. When he says I'm writing about  
7 something you may have heard or read about in  
8 the news, to what is the Mayor referring?

9 A. Probably newspapers.

10 Q. Do you know which ones?

11 A. Whatever did the stories on him.

12 Q. Do you remember reading those  
13 stories?

14 A. I don't read newspapers.

15 Q. So you wouldn't know?

16 A. No.

17 Q. Who would know?

18 A. I don't know.

19 Q. Would the Mayor of the Village of  
20 Babylon know?

21 A. I don't know. I don't read  
22 newspapers.

23 Q. Reading off Plaintiff's  
24 Exhibit 1, the second paragraph, quote, to  
25 begin with, this all started with complaints



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

177

1 ANTHONY DAVIDA

2 to my office from the homeowner's own  
3 neighbors. They complained this was no  
4 ordinary tree house tucked away in someone's  
5 backyard, end quote.

6 What complaint is the Mayor  
7 referring to?

8 A. I don't know.

9 Q. Who would know?

10 A. You have to -- the Mayor said he  
11 received them, I didn't.

12 Q. So Mayor Scordino --

13 A. Scordino, yeah.

14 Q. Mayor Scordino would know,  
15 correct?

16 A. Yes.

17 Q. And you don't?

18 A. Yeah.

19 Q. He continues, quote the tree  
20 house had sidewalls a pitched roof and  
21 electric and that the homeowner built the tree  
22 house nearly on the property line along a  
23 residential street end quote.

24 Are you aware of that?

25 A. Yes.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

178

1 ANTHONY DAVIDA

2 Q. How you know that?

3 A. Because I saw it.

4 Q. This is what you observed from  
5 your car?

6 A. Um-hum.

7 Q. Did you report this?

8 A. Yes, it was all in one report,  
9 two reports because I told him afterwards as  
10 he continued to build, he added electric and  
11 kept building it.

12 Q. How many reports did you make to  
13 the Village of Babylon regarding John Lepper's  
14 tree house?

15 A. I'm gonna say one, the initial  
16 report. The other ones were in conversation  
17 with the Village board members when we would  
18 discuss how much further he continued building  
19 the structure.

20 Q. When you say conversations with  
21 the board that you're recalling here as you  
22 sit here --

23 A. The Village board.

24 Q. -- when did those conversations  
25 occur?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

179

1 ANTHONY DAVIDA

2 A. I don't know. Month ago, year  
3 ago.

4 Q. What month did it occur?

5 A. Don't know.

6 Q. What year did it occur?

7 A. Don't know.

8 Q. Who spoke?

9 A. We all spoke.

10 Q. What did you say?

11 A. I brought the fact that somebody  
12 had asked about is there lights in there. I  
13 said, yeah, there's lights on it, there's one  
14 light outside the door up top.

15 Q. When did you say that?

16 A. When we had our conversation.

17 Q. What day?

18 A. I don't know.

19 Q. Who was present?

20 A. The board members.

21 Q. Anyone else?

22 A. Gerard Glass.

23 Q. Anyone else?

24 A. Nope.

25 Q. Do you know what month it was?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

180

1 ANTHONY DAVIDA

2 A. Nope.

3 Q. You never stood outside the house  
4 and watched the tree house?

5 A. Never.

6 Q. How did you learn about this  
7 information?

8 A. What information?

9 Q. The information mentioned in the  
10 letter from the Mayor about tree houses and  
11 other things.

12 MR. TOSCA: Objection.

13 You can answer.

14 A. I'm confused.

15 Q. Take your time.

16 A. Explain to me what you're saying.  
17 You mean about the tree house with sidewalls  
18 and pitched roof.

19 Q. Yeah, how did you learn about  
20 that?

21 A. I saw it.

22 Q. And you reported it?

23 A. No.

24 I reported the initial -- the  
25 initial report was the substructure that I



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

181

1 ANTHONY DAVIDA

2 told you with beams coming out off the tree.  
3 The rest fell into place while he was going to  
4 court and conversations from updates from  
5 Gerard Glass, and there's all these different  
6 conversations came up.

7 Q. Did a conversation ever come up  
8 about quote, I referred the neighbor's  
9 complaint to our building inspector, end  
10 quote?

11 A. I never heard it.

12 Q. When you say it, did you come to  
13 learn who made those complaints?

14 A. No, I don't know who made the  
15 complaints.

16 Q. Are you one of those neighbors?

17 A. I didn't consider myself a  
18 neighbor. I'm a block and a half away.

19 Q. Do you consider what you said a  
20 complaint?

21 A. No.

22 Q. Do you know what the Mayor is  
23 referring to, that being Mayor Ralph Scordino  
24 when he says, quote I referred the neighbor's  
25 complaints to our building inspector who comma

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

182

1 ANTHONY DAVIDA

2 by the way comma is also a licensed architect  
3 end quote.

4 A. Right.

5 Q. Do you know to what he is  
6 referring?

7 A. He took the complaints and gave  
8 it to the building inspector, Steve Fellman.

9 Q. Who made those complaints?

10 A. I don't know.

11 Q. Who would know?

12 A. I would say Steve Fellman.

13 Q. Who else?

14 A. Maybe the Mayor.

15 Q. Why do you say maybe the Mayor?

16 A. Did he get the initial complaints  
17 or did the Building Department get the  
18 complaints? I don't know.

19 Q. When you say complaints, are you  
20 aware as you sit here under oath whether  
21 neighbors made complaints about Mr. Lepper's  
22 tree house to the Village of Babylon?

23 A. I'm not aware of any neighbor  
24 that filed a complaint.

25 Q. Do you have any reason to doubt



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

183

1 ANTHONY DAVIDA

2 the truth of the statement contained in  
3 Plaintiff's Exhibit 1?

4 A. From the Mayor?

5 Q. Um-hum.

6 A. I have no doubt.

7 Q. Who would know, aside from  
8 Mr. Fellman, about the neighbor's complaints  
9 that were referred to the building inspector?

10 A. I would have to say the Mayor.

11 Q. And you don't know, right?

12 A. Never saw any letters of  
13 complaint.

14 Q. Reading on from Plaintiff's  
15 Exhibit 1, do you know to what this letter  
16 refers when it says, quote, five paragraphs  
17 down, quote the Court told the homeowner he  
18 had to follow the same rules as everybody  
19 else, end quote?

20 A. Yeah.

21 Q. To what is this letter referring?

22 A. I would expect it to mean that  
23 the Court told him we have a set of building  
24 codes and policies between planning board,  
25 zoning board, and Building Department. Those

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

184

1 ANTHONY DAVIDA

2 are the rules you got to follow through, go  
3 through the steps, there's applications you  
4 need to fill out, and go through each step.

5 Q. Did you ever have the opportunity  
6 to discover what it is in terms of quote, the  
7 same rules as everybody else, end quote?

8 A. No.

9 Q. Did you ever ask Mayor Scordino?

10 A. No.

11 Q. As you sit here today, do you  
12 know to what he is referring?

13 A. I just told you. Going through  
14 the proper channels and filling out  
15 applications for the planning board, if you  
16 have to go to the zoning board, applications  
17 for the building permit from the Building  
18 Department and file all that in with the  
19 Building Department.

20 Q. He says the Court told the  
21 homeowner --

22 A. I have no idea with the Courts,  
23 no idea.

24 Q. Who would?

25 A. That would be Jack Rafter, I



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

185

1 ANTHONY DAVIDA

2 guess, and the Building Department inspector  
3 Steve Fellman if he was at the Court date.

4 Q. You don't even know if he was at  
5 the Court date?

6 A. He made the decision, and Steve  
7 Fellman, the building inspector, I would feel  
8 that he would be at court that day, so. I  
9 don't know, I don't go to court.

10 Q. As you sit here today, you're not  
11 aware of who went to court in regards to this  
12 matter?

13 A. Nope.

14 Q. Who would be?

15 A. Steve Fellman, maybe Gerard  
16 Glass, you know. Don't know.

17 Q. Do you agree with this statement  
18 in Plaintiff's Exhibit 1 that followed the one  
19 I just made, quote, instead the homeowner went  
20 to the media to pressure the Village to change  
21 its position, end quote?

22 A. No.

23 MR. TOSCA: Objection.

24 Q. Do you agree with that?

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

186

1 ANTHONY DAVIDA

2 You can answer.

3 A. Yes.

4 Q. Can you explain why you agree  
5 with that?

6 A. He went to Newsday, he went to  
7 social media on Facebook, and everything was  
8 on his side, never even intended to follow  
9 procedure, so it was his side trying to change  
10 and pressure the Village.

11 Q. How did you come to learn about  
12 all those things without reading the news?

13 A. One is Facebook because there's  
14 articles on his name that he posted from  
15 Newsday. Other, I don't know maybe the post  
16 maybe, plus his own conversations that he's  
17 put on Facebook.

18 Q. You reviewed this on Facebook?

19 A. Yes.

20 Q. What have you reviewed on  
21 Facebook in regards to this matter?

22 A. I have read his comments and  
23 there is a lot of comments. They just go on  
24 and on from everybody else, you know people  
25 comment all the time on that.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

187

1 ANTHONY DAVIDA

2 Q. Anything else?

3 A. No.

4 Q. When you say his side, what do  
5 you mean his side?

6 A. John Lepper's position.

7 Q. Did you ever give your own  
8 position?

9 A. No.

10 Q. Village of Babylon ever give a  
11 position?

12 MR. TOSCA: Objection.

13 You can answer.

14 Q. We stand by what was said earlier  
15 regarding following the rules and the codes  
16 and the procedures, that's our side.

17 A. And somebody rejected an  
18 application that was submitted by John Lepper;  
19 is that your side?

20 MR. TOSCA: Objection.

21 You can answer over objection.

22 A. I don't know.

23 Q. You don't know, but that's your  
24 side.

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

188

1 ANTHONY DAVIDA

2 You can answer over objection.

3 A. I don't know if he ever put an  
4 application in.

5 Q. Who would know?

6 A. Building Department.

7 Q. Who else?

8 A. Steve Fellman.

9 Q. Aside from Stephen Fellman, who  
10 else?

11 A. That's it that I would think of.

12 Q. Do you agree with quote, someone  
13 could get hurt, then you guessed it, the  
14 Village could get sued and you, the taxpayers  
15 would pay, end quote, reading from the  
16 second-to-last paragraph of Plaintiff's  
17 Exhibit 1?

18 A. Um-hum.

19 Q. What, if anything, did the  
20 Village of Babylon do to determine the safety  
21 of the tree house?

22 MR. TOSCA: Objection.

23 You can answer over objection.

24 A. We had the building inspector go  
25 over.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

190

1 ANTHONY DAVIDA

2 that you might not remember, maybe you  
3 remember now after seeing this?

4 A. No.

5 Q. You're not a building inspector.  
6 Correct?

7 A. No.

8 Q. You have no training on the  
9 Village of Babylon code. Correct?

10 A. No.

11 Q. You have no training in building  
12 safety. Correct?

13 A. No.

14 Q. But you made a determination  
15 about the safety of this tree house. Correct?

16 MR. TOSCA: Objection.

17 You can answer over objection.

18 A. Just by my observation of looking  
19 at three year old kids, five year old kids.

20 Q. The answer is yes. Right?

21 MR. TOSCA: Objection.

22 A. Yes.

23 Q. Just like you're sitting in a  
24 chair. Correct?

25 A. Yes.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

191

1 ANTHONY DAVIDA

2 Q. Just like you drove a car here.

3 Correct?

4 A. Yes.

5 Q. The answer to the question is,  
6 yes, you made a determination about the safety  
7 of John Lepper's tree house?

8 MR. TOSCA: Objection.

9 You can answer.

10 A. Yes.

11 Q. When was this newsletter sent?

12 A. Before the holidays.

13 Q. Holidays of which year?

14 A. I'm thinking last year. There  
15 was no date on this, so I would think it was  
16 probably this past year. I don't know how  
17 many years this has been going on, it's been  
18 going on two years, three years. This could  
19 be two years ago. I don't know. There is no  
20 date on there.

21 MR. MORRIS: Counsel, you  
22 produced this on September 16, 2019. It  
23 should have been produced months before.

24 Is this the entire letter?

25 MR. TOSCA: What are you saying,



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

192

1 ANTHONY DAVIDA

2 sir?

3 MR. MORRIS: Is this the entire  
4 letter, Plaintiff's Exhibit 1.

5 MR. TOSCA: What we produced in  
6 discovery we produced.

7 MR. MORRIS: Has any portion of  
8 this letter been omitted and redacted?

9 MR. TOSCA: I'm not going to  
10 answer your questions. I'm not here for  
11 your deposition.

12 MR. MORRIS: Where is the date?

13 MR. TOSCA: You can ask --

14 MR. MORRIS: Where is the header?

15 MR. TOSCA: Sir, I'm not  
16 answering your questions. I'm not here  
17 for a deposition.

18 Q. Mr. Davida, by whom was this  
19 letter distributed?

20 A. I don't follow your question.

21 Q. Someone sent the letter, right?

22 A. It was in a program.

23 Q. Who sent the program?

24 A. Came by mail.

25 Q. Program had more than one page,

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

193

1 ANTHONY DAVIDA

2 right?

3 A. Yes.

4 MR. MORRIS: Counsel, when are we  
5 getting the rest of these pages?

6 A. The other pages --

7 MR. TOSCA: Objection.

8 I'm not going to answer  
9 questions. Please do not pose questions  
10 to me, Counsel, okay.

11 Q. Does this letter comport with  
12 your understanding of the issuance of the  
13 summons and the removal of the tree house?

14 A. Yes.

15 Q. Did you ever discuss the  
16 circumstances contained in this letter with  
17 Mayor Scordino?

18 A. Yes.

19 Q. When?

20 A. I don't remember.

21 Q. Do you know what year?

22 A. A year ago.

23 Q. Do you know what date?

24 A. No.

25 Q. Do you know a month?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

194

1 ANTHONY DAVIDA

2 A. Nope.

3 Q. Do you know whether there was  
4 snow on the ground?

5 A. Nope.

6 Q. Do you know day -- whether it was  
7 day or night?

8 A. Nope.

9 Q. Was it in the course of your  
10 duties as a Village of Babylon trustee?

11 A. I would say yes.

12 Q. In the course of your activities  
13 as a Village of Babylon elected official, did  
14 you direct any employee of the Village of  
15 Babylon to prosecute John Lepper with respect  
16 to a tree house on 59 Cockenoe, Village of  
17 Babylon?

18 A. No.

19 MR. TOSCA: Objection.

20 Q. In the course of your activities  
21 as Village of Babylon elected official, did  
22 you direct any employee of the Village of  
23 Babylon to remove the tree house on  
24 59 Cockenoe, Village of Babylon?

25 MR. TOSCA: Objection.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

195

1 ANTHONY DAVIDA

2 You can answer.

3 A. No.

4 Q. What, if anything, caused you to  
5 initiate the investigation of the tree house  
6 designed for the Lepper children?

7 A. Say that once more, please.

8 (Whereupon, the requested portion  
9 was read back by the reporter.)

10 MR. TOSCA: Objection.

11 You can answer over objection.

12 A. I drove by and saw it.

13 Q. Drive by sighting?

14 A. Yeah.

15 MR. MORRIS: Perhaps this is the  
16 time to call the Judge.

17 MR. MORRIS: Mr. Davida, we are  
18 going to call the Judge, I'm going to  
19 respectfully request that you step out  
20 for a moment, please.

21 THE WITNESS: Sure. Absolutely.

22 (A call was placed to Judge  
23 Brown's Chambers.)

24 MALE VOICE: Good afternoon.

25 Judge Brown's chambers.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

196

1 ANTHONY DAVIDA

2 MR. MORRIS: Good afternoon.

3 This is attorney Cory Morris. With me  
4 is defense counsel on Lepper versus  
5 Village of Babylon.

6 MALE VOICE: Do we have the Court  
7 reporter available?

8 MR. MORRIS: She is taking down  
9 every word.

10 MALE VOICE: Hold on one second.  
11 Let me run and see if I can grab the  
12 Judge for you. He may have a quick  
13 moment for you on that privilege issue.

14 MR. MORRIS: Thank you.

15 THE COURT: This is Judge Brown.  
16 Can you hear me okay?

17 MR. TOSCA: Yes, your Honor.

18 MR. MORRIS: Yes.

19 THE COURT: Do you have a court  
20 reporter taking this down?

21 MR. MORRIS: Yes.

22 THE COURT: Okay.

23 Very briefly, because I have four  
24 other matters waiting.

25 What is the problem?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

197

1 ANTHONY DAVIDA

2 MR. MORRIS: Judge, this is  
3 attorney for the plaintiff.

4 There are open work sessions,  
5 they're open to the public. Counsel has  
6 put forward attorney-client privilege.

7 The second part of this really is  
8 on the 16th of September, we received  
9 quote a letter from the Mayor about tree  
10 houses and other things where it states  
11 that, quote, I referred the neighbor's  
12 complaints to our building inspector,  
13 end quote. Not only does this witness  
14 not seem to know anything about this  
15 letter other than receiving it, and we  
16 just received it two weeks ago, this  
17 witness here is being precluded from  
18 testifying about things in open  
19 session on the basis of attorney-client  
20 privilege.

21 THE COURT: I can't say anything  
22 about what the witness knows or doesn't  
23 know. You can inquire.

24 Who is precluding whom from  
25 testifying about what?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

198

1 ANTHONY DAVIDA

2 MR. TOSCA: I'm not precluding  
3 anyone from testifying, your Honor. If  
4 I may be heard. I represent the  
5 defendants.

6 We have Mr. Davida testifying  
7 regarding the tree house. He was the  
8 person who notified the Building  
9 Department about the tree house. At this  
10 point in the testimony that counsel is  
11 referring to, the questions were asked  
12 about Mr. Davida's conversations during  
13 a time when Gerard Glass who is the  
14 Village attorney was updating them on  
15 the litigation in the lower court, the  
16 justice court, this litigation, I guess;  
17 and we're asserting attorney-client  
18 privilege.

19 While the sessions are in open  
20 court, Mr. Davida testified no one was  
21 there during these work sessions that  
22 Mr. Morris is asking about, and I'm  
23 objecting because there were no third  
24 parties present. There was the Village  
25 board and their attorney and I'm

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

199

1 ANTHONY DAVIDA

2 asserting, as to the substance of those  
3 discussions, I'm asserting  
4 attorney-client privilege, your Honor.

5 THE COURT: Let me understand.

6 You've established on the record  
7 that the only people present were the  
8 members of the board and the lawyer?

9 MR. TOSCA: Yes.

10 THE COURT: Mr. Morris, you agree  
11 with that?

12 MR. MORRIS: Yes, I do.

13 THE COURT: Then it does seem  
14 like at that point, there is no sort of  
15 violation of privilege because at that  
16 point, it is a private meeting.

17 MR. MORRIS: Judge, it's an open  
18 session. Right before they meet in  
19 public, the public is entitled to be  
20 there. It's done in open session in  
21 public.

22 MR. TOSCA: With the exception of  
23 this, your Honor --

24 THE COURT: What does that mean,  
25 done in public? Nobody else was there.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

200

1 ANTHONY DAVIDA

2 Correct?

3 MR. MORRIS: That's what he says  
4 as to one incident that he remembers.  
5 He can't seem to remember anyone else.

6 THE COURT: Okay.

7 If nobody else is there, I'm  
8 going to find that there is a basis for  
9 asserting the privilege. It was a  
10 privileged conversation. If someone  
11 walked in the room, then it changes.

12 MR. MORRIS: Understood, your  
13 Honor.

14 I guess I'll question him as to  
15 if anyone walked in the room.

16 Still leads us to the bigger  
17 question, not Deborah Longo but the  
18 Mayor because, and again, we just got  
19 this two weeks ago, otherwise I would  
20 have brought it to your Honor's  
21 attention when we made several  
22 applications to the Court where the  
23 Mayor says that he received complaints  
24 from the homeowner's own neighbors. And  
25 not only that, this witness here, along

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

201

1 ANTHONY DAVIDA  
2 with Mr. Fellman and along with  
3 Mr. Glass are saying that the Mayor is  
4 intricate in this process here. He  
5 literally sent a letter, it seems like a  
6 letter which was part of a larger  
7 newsletter, to persons unknown  
8 throughout the Village of Babylon  
9 about this tree house.

10 THE COURT: Mr. Morris, what are  
11 you asking of me?

12 MR. MORRIS: I just want to  
13 depose the Mayor. He is a named  
14 defendant.

15 THE COURT: We'll have to deal  
16 with that another time.

17 Why don't you finish the  
18 deposition that you're doing and then  
19 we'll get back to that later.

20 Fair enough?

21 MR. MORRIS: Understood, your  
22 Honor.

23 I make it on the record now  
24 because it is the 18,th and I know your  
25 Honor is busy, it's we have 12 days,



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

202

1 ANTHONY DAVIDA

2 I'll make myself available as soon as  
3 possible.

4 THE COURT: Bear in mind, when we  
5 left this, as I recall, with you asking  
6 to depose the Mayor, I said conduct the  
7 other depositions, see if you need the  
8 Mayor. What you're telling me right now  
9 is it sounds like you need the Mayor,  
10 but why don't you take it back to your  
11 office, review it, and if you think  
12 that's appropriate, talk to counsel. If  
13 counsel continues to disagree, then you  
14 get back to me.

15 Fair enough?

16 MR. MORRIS: I can ask counsel  
17 right now. I don't think he's going to  
18 agree, your Honor.

19 THE COURT: I'm not going to do  
20 that. That's a meet and confer you'll  
21 have later.

22 All right?

23 MR. MORRIS: Okay.

24 THE COURT: Good look.

25 MR. MORRIS: Thank you, your

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

203

1 ANTHONY DAVIDA

2 Honor.

3 MR. TOSCA: Thank you.

4 THE COURT: Bye.

5 MR. MORRIS: Before we bring him  
6 in, I assume you're not going to produce  
7 the Mayor.

8 MR. TOSCA: I assume we'll talk  
9 about it later. Let's get the  
10 deposition done. You want to meet and  
11 confer, we'll meet and confer.

12 There's lots of other stuff we  
13 have to do, Cory. And the building --  
14 I'm sorry, the building, the tree house  
15 has to be looked at, so we still have  
16 expert discovery we have to go through,  
17 I presume.

18 I don't know, is that discovery  
19 done by October 1?

20 MR. MORRIS: We have scheduling  
21 order here.

22 MR. TOSCA: Yeah, well, number 1,  
23 I think we're going to need an extension  
24 of that order in any event.

25 MR. MORRIS: This is



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

204

1 ANTHONY DAVIDA

2 unacceptable. We are receiving this,  
3 there's text messages --

4 MR. TOSCA: We --

5 MR. MORRIS: Let me finish  
6 because we're on the record.

7 There's text messages. This  
8 newsletters is incomplete, it looks like  
9 there might be phone calls, voice mails,  
10 other things this client is testifying  
11 to that we have not been provided.

12 I'm going to call him back in  
13 here. We can meet and confer, but I  
14 just ask you with a simple yes or no  
15 whether you will voluntarily produce the  
16 Mayor?

17 MR. TOSCA: I'm not prepared to  
18 give you an answer to that at this  
19 point.

20 MR. MORRIS: Understood.

21 We'll bring him back --

22 MR. TOSCA: We'll bring him back,  
23 let him get his deposition. If you want  
24 to do a meet and confer, we'll do that.

25 MR. MORRIS: Okay.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

205

1 ANTHONY DAVIDA

2 MR. TOSCA: It can't be by  
3 Friday. I've got my day booked up for  
4 tomorrow, and my day booked up for  
5 Friday. We can do it next week.

6 MR. MORRIS: Let's do it today.  
7 Let's bring him in and --

8 MR. TOSCA: I can't do it today.  
9 There are things I have to consider, and  
10 I'm not prepared to do it today, so why  
11 don't we let him finish his deposition.  
12 We'll talk about this on Monday.

13 But we also need a site  
14 inspection. We can talk about that too.  
15 We also need to discuss whether or not  
16 you're going to produce your clients,  
17 the children as witnesses. We need to  
18 discuss that, because if you are,  
19 then --

20 MR. MORRIS: Counsel, note my  
21 objection.

22 Not only that, you have never  
23 noticed the children. That's the first  
24 time we have ever heard that you even  
25 were considering taking the children.



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

206

1 ANTHONY DAVIDA

2 MR. TOSCA: No, we spoke --

3 MR. MORRIS: Let's stop because  
4 we're on the record and this is my  
5 record. Unless you're going to pay.

6 MR. TOSCA: You're not going to  
7 tell me when I can talk --

8 MR. MORRIS: Let's go off the  
9 record.

10 MR. TOSCA: Just put on the  
11 record --

12 MR. MORRIS: No. Go off the  
13 record.

14 MR. TOSCA: I won't allow counsel  
15 to tell me I cannot state --

16 MR. MORRIS: Counsel, note my  
17 objection.

18 Please stop. Please stop.

19 MR. TOSCA: If you don't want to  
20 discuss this, but we don't discuss  
21 something and tell me what I can't --

22 MR. MORRIS: Counsel, please  
23 stop.

24 MR. TOSCA: No, I'm not going to  
25 stop, Mr. Morris.

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

207

1 ANTHONY DAVIDA

2 MR. MORRIS: Please stop.

3 We're going to bring the witness  
4 back in. Please stop.

5 MR. TOSCA: Then let's do the  
6 deposition.

7 MR. MORRIS: Let's do that.  
8 Do you want to get him or I will.

9 MR. TOSCA: I will get him.

10 Thank you.

11 (Counsel leaves the room to get  
12 the witness.)

13 MR. MORRIS: Time now is 2:07.

14 Q. Mr. Davida, did you discuss your  
15 testimony with anyone during the break?

16 A. No.

17 Q. During those open sessions, did  
18 anyone ever show up?

19 MR. TOSCA: Objection.

20 Asked and answered.

21 You can answer.

22 A. Show up to what?

23 Q. An open session?

24 A. You mean the work sessions that  
25 we have?



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

208

1 ANTHONY DAVIDA

2 Q. Yes.

3 A. Well, I don't know what you're  
4 referring to.

5 We had maybe one or two, couple  
6 of times.

7 Q. At those one or two, who showed  
8 up aside from the board members?

9 A. There's a woman, she came two or  
10 three times, her name is Joan Crockett, like  
11 Davy Crockett.

12 Q. Did you ever talk about the  
13 Lepper family tree house when Joan Crockett  
14 was present?

15 A. No.

16 Q. Did you ever talk about the tree  
17 house with any other member aside from the  
18 Village of Babylon, Mr. Glass, did you ever  
19 have any discussion, anyone ever show up aside  
20 from them?

21 A. No.

22 Q. Mr. Davida, you have had the same  
23 phone now for more than two years?

24 A. Yes.

25 Q. What kind of phone is this?

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

209

1 ANTHONY DAVIDA

2 A. Android.

3 Q. What is the make and model of  
4 that Android?

5 A. I don't know. It's a Motorola.  
6 I don't know what make and model, Android.

7 Q. You have had that phone for more  
8 than two years?

9 A. Yes.

10 Q. You never provided that phone to  
11 counsel, correct?

12 MR. TOSCA: Objection.

13 A. No.

14 RQ MR. MORRIS: I call for the  
15 continued preservation of that phone,  
16 all voice, text, and electronic mails  
17 from the accounts of this witness as  
18 referenced.

19 And we're going to reserve the  
20 right to recall this witness at this  
21 time.

22 Having heard no other objection,  
23 the record is closed.

24 MR. TOSCA: Hold on. I object.

25 I thought you were going to



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

210

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ANTHONY DAVIDA  
continue with your questioning.  
Objection.  
MR. MORRIS: Time now is 2:09.  
Thank you very much.  
(Time noted: 2:09 p.m.)

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

211

A C K N O W L E D G M E N T

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF                     )

I, ANTHONY DAVIDA, hereby certify  
that I have read the transcript of my  
testimony taken under oath in my deposition of  
September 18, 2019; that the transcript is a  
true, complete and correct record of my  
testimony, and that the answers on the record  
as given by me are true and correct.

\_\_\_\_\_  
ANTHONY DAVIDA

Signed and subscribed to before  
me, this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of New York



John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

212

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-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
ANTHONY DAVIDA	MR. MORRIS	5

-----DOCUMENT REQUESTS-----

Page 209	Continued preservation of that phone, all voice, text and electronic mails from the accounts of this witness as referenced
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-----INFORMATION TO BE FURNISHED-----

Page 7	Village of Babylon email address
27	Director of Engineering's full name
54	Names on literature or written documentation on that campaign that witness handed out

-----EXHIBITS-----

PLAINTIFF'S	FOR I.D.
1 Letter from the Mayor about tree houses and other things	171

(Counsel retained exhibits.)

John Lepper v. Village of Babylon  
ANTHONY DAVIDA - September 18, 2019

213

C E R T I F I C A T E

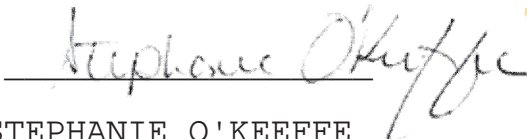
STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF SUFFOLK                 )

I, STEPHANIE O'KEEFFE, a Notary  
Public within and for the State of New York,  
do hereby certify:

That ANTHONY DAVIDA, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such deposition  
is a true record of the testimony given by  
such witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage; and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 18th day of September, 2019.

  
STEPHANIE O'KEEFFE

























*The Honorable John T. Rafter, Village Justice*

---

# State of New York

## BABYLON JUSTICE COURT

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JOHN LEPPER,

*Plaintiff*

-v-

VILLAGE OF BABYLON

RALPH SCORDINO, *Mayor*, KEVIN MULDOWNNEY, *Deputy Mayor*, ROBYN SILVESTRI,  
*Village Trustee*, TONY DAVIDA, *Village Trustee*, MARY ADAMS, *Village Trustee*

*Defendants,*

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## NOTICE OF LITIGATION HOLD

*Concerning and Relating to Informations*

**№ 494213, 494214, 494215, 494222**

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VICTOR JOHN YANNAcone, JR., (VY6405) *of counsel*  
Phone: (631) 475-0231  
Email: barrister@yannalaw.com



To: Deborah Longo, Planning Board, Village of Babylon  
153 West Main Street  
Babylon, New York 11702

Suzanne Schettino, Department of Public Works  
153 West Main Street  
Babylon, New York 11702

Gerard Glass, Esq., Village of Babylon Attorney  
72 East Main Street, Suite 3  
Babylon, New York 11702

Hon. John T. Rafter, Babylon Village Justice  
153 West Main Street  
Babylon NY 11702

Stephen Fellman, Village of Babylon Building Inspector  
153 West Main Street  
Babylon, New York 11702

Village of Babylon Mayor Ralph Scordino,  
Village of Babylon Deputy Mayor Kevin Muldowney,  
Village of Babylon Trustee Robyn Silvestri,  
Village of Babylon Trustee Tony Davida,  
Village of Babylon Trustee Mary Adams,  
153 West Main Street  
Babylon, New York 11702

Town of Babylon  
Attn: Babylon Town Attorney;  
200 Sunrise Hwy  
Lindenhurst, NY 11757

Suffolk County District Attorney's Office  
200 Central Drive South  
Riverhead, New York 11901

## LITIGATION HOLD NOTICE

PLEASE TAKE NOTICE, that on behalf of JOHN LEPPER (“Claimant” or “Plaintiff”) pursuant to Federal Rules of Civil Procedure and the New York Civil Practice Law and Rules, that each of you and all of you, and each attorney and law firm who represents you or any of you, and each attorney and law firm who has represented you in the past with respect to any matter involving the subject matter of this litigation is directed to immediately implement a “litigation hold” such that any documents, data, or electronically stored information (ESI) is and shall be preserved and maintained in its native format, and in accordance with the following safeguards:

### Electronic data to be preserved

1. The following types of electronic data and/or the electronic data of the subsidiaries, divisions, agents, employees and relevant third-parties or vendors of each named defendant should be preserved in native format, in accordance with the steps set forth below:
  - 1.1. All electronic mail and information about electronic mail (including message contents, header and logs of e-mail system usage) sent or received by any custodian relating to the subject matter of this litigation;
  - 1.2. All databases, including field and structural information as well as records, containing any information relating to the subject matter of this litigation;
  - 1.3. All logs of activity on any computer systems that have been used to process or store data containing information relating to the subject matter of this litigation;
    - 1.3.1. All other electronic data containing information about, or relating to the subject matter of this litigation, including but not limited to: All word processing files and file fragments;
    - 1.3.2. Electronic data created by applications which process financial, accounting and billing information;



1.3.3. All electronic calendar and scheduling program files and file fragments;

1.3.4. All electronic spreadsheet files and file fragments.

### **On-Line Data Storage**

2. With regard to online storage and/or direct access storage devices including, but not limited to, any file server or data array (e.g. RAID) physically or remotely attached to the computers of any named Defendant through wired or wireless networking, the Plaintiff demands that you and each of you do not modify or delete any existing electronic data files that meet the criteria set forth above, unless an exact mirror image has been made and will be preserved and kept accessible for purposes of this litigation.

### **Off-Line Data Storage, Backups and Archives**

3. With regard to all electronic media used for offline storage, such as magnetic tapes and cartridges, CDs, DVDs, USB devices (e.g. 'thumb drives') and the like, used with any computer, file server or data array (e.g. RAID), whether physically or remotely attached to the computers of any named Defendants through wired or wireless access that contain any electronic information relating to the subject matter of this litigation, the Plaintiff demands that you and each of you stop any activity that may result in the loss of such data. This demand is intended to cover all removable electronic media used for data storage in any device, including those containing backup and/or archive data sets.

### **Preservation of Replaced Data Storage Devices**

4. You and each of you to whom this notice is directed shall preserve any electronic data storage devices and/or media that may contain data relating to the subject matter of this litigation and that it replaces for any reason.

### **Fixed Drives on Stand-Alone Personal Computers and Network Workstations**

5. You and each of you to whom this notice is directed shall not alter, delete or over-write relevant electronic data that existed on fixed drives attached to stand-alone microcomputers, network workstations and/or data arrays (e.g. RAID) at the time of filing of

this action, or perform other procedures such as data compression and disk defragmentation or optimization routines that may impact such data, unless an exact mirror image has been made of such active files and directory listings (including hidden and/or deleted files) for all directories containing such files and that it completely restore any altered, deleted or over-written electronic files and file fragments and arrange to preserve all such data during the pendency of this litigation.

### **Applications and Utilities**

6. You and each of you to whom this notice is directed shall preserve copies of all applications and utilities that may be used to process electronic data discussed in this letter.

### **Log of System Modifications**

7. You and each of you to whom this notice is directed shall maintain an activity log of document modifications made to any electronic data processing system that may affect the capability of any system to process any electronic data relating to the subject matter of this litigation.

### **Personal computers and all other devices used by employees, independent contractors and others under the control of you and each of you**

8. You and each of you to whom this notice is directed shall immediately take the following steps with regard to all fixed drives attached internally, externally, physically and/or remotely by wired or wireless access to any personal computers used by any custodian under the control of you and each of you:
  - 8.1. An exact mirror image must be made of all electronic data relating to the subject matter of this litigation;
  - 8.2. Full directory listings (including hidden and deleted files) for all directories and subdirectories must be written;
9. You and each of you to whom this notice is directed shall immediately take the following steps with regard to all removable drives attached internally, externally, physically and/or remotely by wired or wireless access to any personal computers used by any custodian under the control of you and each of you:



- 9.1. All removable electronic media, such as floppy diskettes, magnetic tapes and cartridges, CDs, DVDs, USB devices (e.g. 'thumb drives') and the like that existed before the delivery of this letter and that contain relevant data should be collected, maintained intact and kept available during the pendency of this litigation.
10. You and each of you to whom this notice is directed shall immediately take the following steps with regard to all other relevant devices used by any custodian under the control of you and each of you, whether it is internally, externally, physically and/or remotely attached by wired or wireless access to any system used by you and each of you:
  - 10.1. All cellular phones, personal data assistants (e.g. Blackberry, iPhones, iPads), tablets, and/or any other device that stores electronic information (e.g. RAM on printing devices or FAX machines) and the like that existed before the delivery of this letter and that contain relevant data should be collected, maintained intact and kept available during the pendency of this litigation, together with voicemail messages, text messages (SMS or otherwise), instant messages, and other communications and notes.

#### **Evidence Created After Receipt of This Notice**

11. Any relevant electronic data created after receipt of this Notice should be preserved in a manner consistent with the directions in this Notice.

#### **Metadata**

12. As it is relevant to all items cited hereinabove, you and each of you is instructed to preserve all metadata and not to alter, delete and/or over-rite any metadata.

#### **Other materials concerning any of the Plaintiffs**

13. You and each of you to whom this notice is directed shall immediately identify, protect, and preserve all other materials in whatsoever form they may exist which relate to the Plaintiffs herein.

**PLEASE TAKE FURTHER NOTICE**, that all counsel must advise their clients of a litigation hold instruction and direct them to preserve all electronically stored information (ESI) contained in, but not limited to, the plaintiff's laptop computer(s), home desktop computer(s), cellular phone(s), personal digital assistant(s), home computer(s), business computer(s), emails, email accounts, home telephones, work telephones, text messages, IM accounts, voicemails, and other electronic storage devices, etc., including all Meta Data including, but not limited to, information embedded in computer files reflecting the file creation date, when it was last accessed or edited, by whom it was last accessed or edited, and previous versions or editorial changes; System Data including, but not limited to, the computer records of routine transactions, functions, password access requests, the creation or deletion of files and directories, maintenance functions, and access to and from other computers, printers, or communication devices, and Backup Data including, but not limited to, all off-line tapes or disks created and maintained for short term disaster recovery.

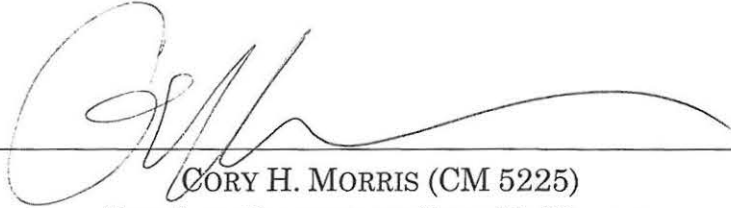
**PLEASE TAKE FURTHER NOTICE**, that this demand is a continuing demand and this demanding party will object at the time of trial to the introduction of any testimony or evidence which flows from the existence of such documents or information which has not been properly preserved and made available for production.

**PLEASE TAKE FURTHER NOTICE**, that all records which might be exempt or are claimed to be exempted under the Freedom of Information Law, Public Officers Law, or the Freedom of Information Act must be preserved in accordance with this litigation hold notice.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK



DATED AT Dix Hills, New York  
November 16, 2018

A handwritten signature in black ink, appearing to read 'C. Morris', is written over a horizontal line.

CORY H. MORRIS (CM 5225)  
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Email: barrister@yannalaw.com

LONG ISLAND / SUFFOLK

## Cops: Resident of drug overdose house arrested

By WILLIAM MURPHY

william.murphy@newsday.com

Updated May 4, 2012 4:21 PM

A house in Babylon Village that had been the scene of drug overdoses was raided by Suffolk County police earlier this week and resulted in the arrest of one person and the seizure of illegal drugs and a handgun, police said Friday.

Christian Repetto, 24, who lived in the house at 63 Wyandanch Ave. that has been the subject of complaints about drug activity, was charged with several counts of criminal possession of a controlled substance and a charge of possessing an illegal .380 handgun, Insp. Gerard Gigante, commanding officer of the First Precinct, said.

The inspector said ambulances went to the house three times in the past six months and each time took someone to the hospital for treatment of a drug overdose, none of which were fatal.



"In response to community complaints, the precinct initiated an investigation into drug activity at 63 Wyandanch Avenue and on May 2nd at about 12:45 a.m. executed a search warrant," Gigante said.

ADVERTISING

He said officers who executed the search warrant found quantities of marijuana, heroin and prescription drugs, including Xanax and Oxycodone.

Repetto pleaded not guilty at his arraignment, the district attorney's office said. He is due back in court May 12.

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**By WILLIAM MURPHY**

william.murphy@newsday.com

Kathleen Matty Court Reporting

Expedited and researched minutes as per John  
Lepper's request on 1/3/18.

Minutes from 8/14/18. 7 pages @ 6.00 and  
\$35.00 to research.

Total: \$77.00



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VILLAGE COURT OF THE  
VILLAGE OF BABYLON

-----X

JOHN LEPPER,

-against-

Defendant.

-----X

153 West Main Street  
Babylon, New York

August 14, 2018  
2:20 p.m.

B E F O R E: John T. Rafter

**ORIGINAL**

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A P P E A R A N C E S :

GERARD GLASS, ESQ.  
Attorney for Village of Babylon  
72 East Main Street  
Babylon, New York 11702



THE CLERK: John Lepper.

MR. LEPPER: Yes.

MR. GLASS: For the Village  
of Babylon Gerard Glass.

JUDGE RAFTER: Good  
afternoon, Mr. Glass.

MR. GLASS: Good afternoon,  
Judge.

Judge, this matter is on  
for an arraignment.

We'd ask for after the  
arraignment a conference date of  
approximately a month out.

We had an opportunity to  
conference this matter with Mr.  
Lepper.

He has met with the  
building inspector in terms of  
the Building Inspector's  
requirements in order to move  
ahead and make an effort to  
legalize the structure.

And that includes that he  
has to provide plans that are

1  
2 stamped by an architect or  
3 engineer.

4 He has to submit a site  
5 plan showing the setbacks.

6 Then the matter will be  
7 referred to the building  
8 inspector.

9 Mr. Lepper has indicated  
10 that he does not agree with the  
11 Building Inspector's  
12 determination.

13 I have advised him not only  
14 if there are area-related issues  
15 that need to go to the Zoning  
16 Board, but he can also appeal  
17 them -- the Building Inspector's  
18 determination itself, if he  
19 believes he should not be before  
20 the Zoning Board at all.

21 So I think we have an  
22 understanding as to what he needs  
23 to move forward.

24 The building inspector has  
25 also served him with a Notice,



1

5

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that is with any structure that  
does not have a CO, that the  
structure should not be occupied.

3

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5

The Village is bound to  
give that advisement.

6

7

He has given it to Mr.

8

Lepper in writing until such time  
as the structure is legalized.

9

10

JUDGE RAFTER: So, we will  
arraign Mr Lepper at this time.

11

12

Mr. Lepper, then as to

13

Information 494213 which alleges  
that on July 11th, at 3:00 p.m.,

14

15

construction was undertaken at

16

the premises located at 59

17

Cockonoe Avenue in the Village of

18

Babylon in violation of Babylon

19

Village Code 365.26 you wish to

20

plead not guilty; is that

21

correct?

22

MR. LEPPER: Yes, Your

23

Honor.

24

JUDGE RAFTER: A plea of

25

not guilty is entered on your

1  
2                   behalf as to that charge.

3                   Is September 11th  
4                   agreeable?

5                   MR. GLASS: That is fine,  
6                   Judge --

7                   Why don't we use three  
8                   weeks as a control date.

9                   And if he needs more time,  
10                  we can speak about that.

11                  JUDGE RAFTER: We will  
12                  adjourn it then to September 4th  
13                  as opposed to September 11th.

14                  MR. GLASS: People ready,  
15                  Judge.

16                  JUDGE RAFTER: So noted.  
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C E R T I F I C A T E

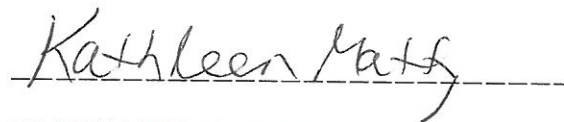
STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

I, KATHLEEN MATTY, a Notary Public within  
and for the State of New York, do hereby certify:  
that I am not related to any of the  
parties to this action by blood or marriage;  
and that I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 7th day of January, 2019.

  
KATHLEEN MATTY.

1 VILLAGE COURT OF THE  
2 VILLAGE OF BABYLON  
-----X

3 JOHN LEPPER,  
4

5  
6 Defendant.  
7

8  
9 -----X

10  
11 153 West Main Street  
12 Babylon, New York

13 September 4, 2018  
14 2:39 p.m.  
15

16 B E F O R E: JOHN T. RAFTER  
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**COPY**



1           A P P E A R A N C E S:

2

GERARD GLASS

3

Attorney for VILLAGE OF BABYLON

4

72 East Main Street

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Babylon, New York 11702

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1 MR. GLASS: Gerard Glass, 72 E. Main  
2 Street, 3B, Babylon, New York 11702.

3 MR. LEPPER: Good afternoon, Your  
4 Honor.

5 MR. GLASS: Judge, I believe this  
6 matter is on for arraignment.

7 JUDGE RAFTER: Have you had a  
8 conference with Mr. Lepper?

9 MR. GLASS: I have, Judge. My  
10 understanding in speaking with the Building  
11 Department is the reason that new summons  
12 were issued was that there was additional  
13 work done to this treehouse structure. Mr.  
14 Lepper has taken the position that the  
15 structure itself is exempt from building  
16 code requirements. The Village takes  
17 contrary position. The building inspector  
18 and myself are prepared to move forward with  
19 this.

20 We would propose that upon entry of not  
21 guilty plea today to the new charges, that  
22 this be joined with the existing charges and  
23 put over to next week if that's the date  
24 that the other charges are on, which I  
25 believe it is.



1 JUDGE RAFTER: I don't believe Mr.  
2 Lepper was arraigned on the other charges --  
3 we did actually arraign Mr. Lepper back in  
4 August.

5 Okay, Mr. Lepper, do you wish to plead  
6 not guilty to the other remaining charges?

7 MR. LEPPER: Your Honor, is there  
8 anyway we could be heard today?

9 JUDGE: RAFTER: We're not going to  
10 have a trial today.

11 MR. LEPPER: Okay, I thought that was  
12 why we agreed on August 14th for today.

13 JUDGE RAFTER: I believe that there was  
14 a discussion at that time. I think there  
15 was a thought process that this could be  
16 resolved with regard to the various charges,  
17 but that is not the case.

18 Will you be ready next week, Mr. Glass?

19 MR. GLASS: I will be.

20 JUDGE RAFTER: And you'll be ready for  
21 trial?

22 MR. LEPPER: I'm here today, Your  
23 Honor.

24 I was charged with the same charges  
25 from the first violation.

1 THE RAFTER: Well each day can be a  
2 continued violation.

3 MR. LEPPER: I understand.

4 JUDGE RAFTER: So then firstly as to  
5 Information 494214~~X~~ on July 12, 2018 at  
6 3:00 p.m. construction was undertaken  
7 without the requisite permit at the premises  
8 located 59 Cockonoe Avenue in violation of  
9 Code Section 365.26; do you wish to plead  
10 not guilty as to that?

11 MR. LEPPER: Yes, Your Honor.

12 JUDGE RAFTER: Plea of not guilty is  
13 entered on your behalf as to that  
14 Information.

15 Information 494214 alleges the same  
16 offense on July 13th at 3:00; do you wish to  
17 plead not guilty as to that as well?

18 MR. LEPPER: Yes, Your Honor.

19 JUDGE RAFTER: Plea of not guilty is  
20 entered on your behalf as to that charge.

21 Lastly, as to Information 494222 it is  
22 alleged on August 21, 2018 the same offense  
23 occurred and you wish to plead not guilty as  
24 to that; is that correct?

25 MR. LEPPER: Yes, Your Honor.



1 JUDGE RAFTER: A plea of not guilty is  
2 entered on your behalf as to that charge as  
3 well.

4 We'll set this matter down for trial  
5 then for next week, September 11th.

6 MR. GLASS: Judge, for the record just  
7 so it's clear here, I know there was  
8 electric at one point that was connected to  
9 the treehouse. The understanding I have is  
10 that the electric has been removed. It's my  
11 further understanding that the building  
12 inspector has directed that there be no  
13 further work, just so we're clear here,  
14 concerning the treehouse, that there are to  
15 be no persons in the treehouse, that this  
16 structure is uncertain as to its ability to  
17 sustain weight, railing, etcetera, and the  
18 building inspector has direct concerns that  
19 he asked that I put on the record that the  
20 defence here is to stop work order and stop  
21 use order in effect regarding the treehouse.

22 JUDGE RAFTER: Mr. Lepper, is there any  
23 electric?

24 MR. LEPPER: There is an extension  
25 cord.

1 JUDGE RAFTER: I'm going to suggest  
2 that no electric be used in the treehouse  
3 until the trial.

4 MR. LEPPER: Your Honor, may I say  
5 something? I spoke to this gentlemen,  
6 Mr. Glass, regarding the electric that's  
7 going up there. It illuminates the street  
8 because we found some paraphernalia in our  
9 bushes over there, so I have users outside  
10 in my bushes. I'm illuminating the street  
11 with that light, and also a couple of other  
12 lights that are hung from the tree.

13 MR. GLASS: The electric to that  
14 treehouse needs to be disconnected.

15 JUDGE RAFTER: You can illuminate that  
16 area without involving the treehouse.

17 MR. LEPPER: Okay.

18 JUDGE RAFTER: Yes?

19 MR. LEPPER: Actually, the light is on  
20 the treehouse. It would be on the north  
21 side of the treehouse.

22 JUDGE RAFTER: Can you suspend the  
23 lighting from a different location?

24 MR. LEPPER: I can put another light in  
25 the tree and suspend it from the tree, but



1 I'm illuminating the street that's unlit.

2 JUDGE RAFTER: Suspend it from a tree  
3 then if that's your desire but not from the  
4 treehouse.

5 The other condition is that no one can  
6 go into the treehouse.

7 MR. LEPPER: I understand. No body has  
8 been in the treehouse, but I never received  
9 the stop work order. I was told that nobody  
10 is to occupy the last time we met here until  
11 such time that the inspector deems that it's  
12 a safe structure, so nobody has occupied it.  
13 When the kids go out a play, they don't go  
14 up there, but I never received a stop work  
15 order so I continued just to finish it. I  
16 put a door on it one day and that was pretty  
17 much it.

18 JUDGE RAFTER: Understanding the  
19 charges that no permit was obtained, you  
20 shouldn't undertake work.

21 MR. LEPPER: I understand, Your Honor.  
22 I was told on May 10th that I was putting up  
23 a structure that might require a permit, so  
24 I came down and spoke to Mr. Fellman, and on  
25 May 19th I submitted, which they said they

1 would accept, a survey of my house cause we  
2 did extensive work on the house since 2012,  
3 but I submitted a survey with a drawing. I  
4 went to drafting school so it was like a  
5 hand drawing, and also a drawing of the  
6 treehouse and the location. I submitted  
7 that on May 19th and then I waited until the  
8 end of June, the week before my sons  
9 birthday, I started erecting it cause I  
10 never heard anything back from the Village.

11 JUDGE RAFTER: Did you submit a final  
12 application for the permit?

13 MR. LEPPER: I did.

14 JUDGE RAFTER: And was there a decision  
15 with regard to the application?

16 MR. LEPPER: No, sir.

17 JUDGE RAFTER: Have you inquired as to  
18 what the status of the application is?

19 MR. LEPPER: No, sir. I started  
20 putting up the walls. As I told Mr. Fellman  
21 I was putting up a treehouse for my son's  
22 birthday on July 7th, so I put it up just  
23 the outside walls, and I never received -- I  
24 assumed that if it wasn't going to be  
25 approved that I would receive a stop work



1 order somewhere right after that, which I  
2 never received, so I just worked and then I  
3 received the first violations.

4 JUDGE RAFTER: You do understand that  
5 obviously typically you have to apply for a  
6 permit and the permit has to be issued  
7 before the work begins, as opposed to the  
8 work being undertaken and then possibly the  
9 permit in issue being denied.

10 MR. LEPPER: I understand that, sir.

11 JUDGE RAFTER: With that being said,  
12 don't do anything further with regard to the  
13 structure or alteration of the treehouse,  
14 and make sure no one goes in the treehouse.

15 MR. LEPPER: Absolutely.

16 JUDGE RAFTER: Is there anything else  
17 you to address?

18 MR. GLASS: No, Judge.

19 JUDGE RAFTER: Is there anything else  
20 you want to go over?

21 MR LEPPER: Just the fact that the  
22 building code states in there that a  
23 structure of 90 square feet is not a  
24 violation, so I don't really -- I ask --

25 JUDGE RAFTER: I will listen to the

1 evidence, I will review the law and make a  
2 decision, that's my rule.

3 MR. LEPPER: Yes, sir.

4 JUDGE RAFTER: We'll see you back next  
5 week.

6 MR. LEPPER: Just one more question,  
7 sir. I'm a city fireman so really September  
8 11th is a tough day for me to come down.

9 JUDGE RAFTER: So one more week with  
10 the understand obviously that the conditions  
11 which we've talked about have to be complied  
12 with.

13 MR. LEPPER: Absolutely.

14 JUDGE: We'll accommodate you, Mr.  
15 Lepper, and we'll adjourn it then to  
16 September 18th.

17 MR. GLASS: People are ready.

18 JUDGE RAFTER: So noted.

19

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C E R T I F I C A T E

I, Lisa Y. Ramirez, hereby certify that the Statement on the Record was held before me on the 4th day of September, 2018.

That the within statement is a true and accurate record of the stenographic notes taken by me. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



LISA Y. RAMIREZ

**Your Name**

Kathy montalbano

**Email Address**

mont102@optonline.net

**Case Number**

12547474

**Home Address**

102 wyandanch ave  
babylon New York 11702

**Home Phone Number**

6316695644

**Preferred Contact Method**

Email

**Comments/Inquiries**

Unfortunately I cannot attend todays meeting regarding the treehouse on Cockenoe Ave.  
I am in full support of this tree house and have enjoyed watching it progress and am  
looking forward to the finished product. Looks great and adds to the charm of the village.

**Privacy**

Village of Babylon is committed to protecting your privacy. You have received this email because you are a  
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your system administrator.

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ZONING BOARD OF APPEALS  
 Bruce E. Humenik, *Chairman*  
 John J. Conroy, *Secretary*  
 Christopher Resch  
 Rachel A. Scelfo  
 Frank Seibert  
 Jeffrey C. Weber



153 West Main Street  
 Babylon Village  
 New York 11702  
 (631) 669-1500

November 18, 2016

Mr. Mark Anthony Munisteri  
 Mark Anthony Architects  
 1563 Bellmore Avenue  
 Bellmore, NY 11710

RE: Baldauf, 50 Thompson Avenue, Babylon, NY

Dear Mr. Munisteri,

After due consideration of the testimony given and evidence submitted, it was voted by the Board to **GRANT** this amended application for permission to maintain a garage requiring a variance to reduce the minimum side yard setback of 15 feet required for the garage to 5.27 feet proposed and to reduce the minimum side yard setback for the accessory building from 15 feet required to 3.67 feet proposed; and to **DENY** the minimum side yard setback of 15 feet required for the tree house to 7.2 feet proposed; the increase of the height limits of the accessory building from 15 feet permitted to 21.1 feet proposed; and the increase of the square feet permitted for the tree house/playground from 90 square feet permitted to 192 square feet proposed. Property located in Residence A-11 District. Suffolk County Real Property Tax Map District 0102, Section 13, Block 2, Lot 6. Application made in accordance with Section 365-13.

The variance relief requested by the Applicant to maintain the tree house and build an accessory building requiring a height variances are in the nature of Area Variances and the standards of Village Law Article 7, Section 712b[3], are applicable. Accordingly, in making its determination, the Zoning Board of Appeals is required to take into consideration the benefit to the Applicant, if the Variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In short, the legislature has dictated that a balance test be applied. The statute further requires that in making such determination, the Board shall also consider the following:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the Area Variances.

NOV 21 2016

*the copy provided  
 to parent @ 11.25*

2. Whether the benefits sought by the Applicants can be achieved by some method feasible for the applicant to pursue other than Area Variances.
3. Whether the requested Area Variances are substantial.
4. Whether the proposed Variances will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or community, and
5. Whether the alleged difficulty was self-created.

The consideration as to whether or not an alleged difficulty is self-created is by virtue of the statute to be considered as relevant, "but shall not necessarily preclude the granting of an Area Variance."

Pursuant to the Village Code Section 248-32, the Board of Appeals is required to consider prior to granting an approval, the criteria set forth in Section 248-32 B.1[a] through [d] and 2[a] through [1].

The Board feels that the request for the variances for the tree house (height, side yard, and area) the proposed accessory building would not be in keeping with area zoning or with the character of the neighborhood. Furthermore, there are alternative means of gaining the benefits sought under this request without the need for these variances. In particular the Board finds that:

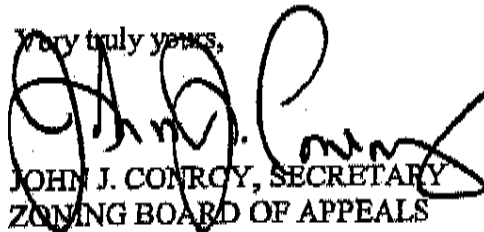
1. The variances to reduce the minimum side yard setback of 15 feet required for the tree house to 7.2 feet proposed, the increased height from 15 ft. allowed to 21ft. proposed and to increase the square footage permitted for the tree house/playground from 90 square feet permitted to 192 square feet proposed would all be undesirable changes having an adverse impact. The limitations as to height size and setback for the accessory structure are intended to preserve open space and limit intensity of use, especially within close proximity to adjoining properties. To grant these variances, especially in the aggregate for a single accessory structure is contrary to the purposes of the ordinance.
2. The benefits can otherwise be achieved by the Applicant. In particular the applicant can reduce the size and height of the accessory structure and relocate same.
3. The requested variances are each substantial and in the aggregate the variances are even more significant because they all relocate to the same structure.



4. The variances if granted would adversely affect the aesthetic characteristics having a negative impact on the surrounding properties.
5. The difficulty is self-created, arising only by reason of the Applicant's desire to construct a tree house and an accessory building which exceeds the height and area limits and to locate the structure closer to the side yard than permitted.

This constitutes the decision of the Board.

Very truly yours,



JOHN J. CONROY, SECRETARY  
ZONING BOARD OF APPEALS

JJC/ke

Enclosure

cc: Ralph A. Scordino, Mayor  
Steve Fellman, Bldg. Inspector  
James Slack, Planning Board Chairman  
Patricia C. Carley, Village Clerk  
David Roth, Esq.

## VILLAGE OF BABYLON

## APPLICATION TO THE BOARD OF APPEALS

(page 2 of 4)

Description of relief sought, attach separate sheet if necessary:

We are asking for a minimum side yard setback of 7.2' for the treehouse, 5.27' for the garage and 3.67' for the shed. We are also requesting a shed height of 21.1' and a treehouse/playground of 192 s.f.)

## \*\*\* PLEASE NOTE \*\*\*

Variances required will be included whether or not listed above, as deemed necessary, and as determined by the Site Plans Examiner and the Zoning Board of Appeals, after review of the plans submitted with this application. The legal notice for this application will be derived based on the plans submitted.

1. Has a building permit been refused by Building Inspector? *No*.....
2. Is there a school, house of worship, or hospital within 500 ft. of this premises? *No*..
3. Approximate cost of work this application is made for? \$ *\$45,000*.....
4. Is this premises with 500 feet of (Answer Yes or No):
  - No*... Boundary of any Village or Town
  - No*... Boundary of any existing or proposed County, State, or Federal park.
  - No*... The right of way of any existing or proposed County or State parkway, thruway, expressway, road or highway.
  - No*... The existing or proposed right of way of any stream or drainage Channel owned by the County or for which the County has established Channel lines.
  - No*... The existing or proposed boundary of any other County, State or Federal owned land.
  - Yes*... The Atlantic Ocean, Long Island Sound, any bay in Suffolk County, Or estuary of any of the foregoing bodies of water.



## Office of the Village Clerk

Date received 11/10/16 REQUIRED RESPONSE DATE 11/17/16

DEPARTMENT to compile documents requested and to receive FOIL request:

(circle)

Village Clerk

Joel

Mayor

Treasurer

Building

ZBA

architectural review

(circle who to get copies) other than Village Clerk and above:

Joel

Mayor

Treasurer

Building

Total pages \_\_\_\_\_ Fee due @ .25 per page \_\_\_\_\_

Date documents will be available if not on response date \_\_\_\_\_

Letter sent \_\_\_\_\_

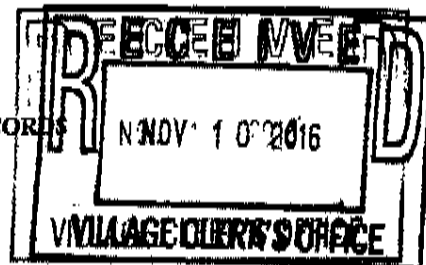
11/15/16

- Ms. Parenti  
called and if  
decision by 15.  
ready after ZBA  
meeting, noted  
for fail

APPLIC.

ON

C RECORDS



TO: RECORDS ACCESS OFFICER  
VILLAGE OF BABYLON  
153 W MAIN ST  
BABYLON, NEW YORK 11702

12/6/16

- called to see if  
check all wanted  
Fail-LM

11/30 am

I hereby apply to (check one)

Or

✓

cord:

① Architectural review  
march 31, 2016

in regards to 50 Thompson Ave  
Babylon, NY

Print name Jeanette Parenti

Mailing address 7 Trey Place  
Merrick, NY 11566

Daytime Phone # 516 510 7134Signature [Signature]Representing Harold Baldauf

② 6-15-16  
Zoning Board Meeting minutes  
in relation to 50 Thompson Ave  
Babylon, NY

③ 7-20-16  
Zoning Board Meeting minutes  
in relation to 50 Thompson Ave  
Babylon, NY

APPROVED \_\_\_\_\_ OR  
DENIED \_\_\_\_\_ (FOR THE REASON CHECKED BELOW):

CONFIDENTIAL DISCLOSURE \_\_\_\_\_ PART OF INVESTIGATORY FILES

UNWARRANTED INVASION OF PERSONAL PRIVACY \_\_\_\_\_

RECORD OF WHICH THIS AGENCY AS LEGAL CUSTODIAN CANNOT BE FOUND \_\_\_\_\_

EXEMPTED BY STATUTE OTHER THAN THE FREEDOM OF INFORMATION ACT \_\_\_\_\_

OTHER \_\_\_\_\_

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

Notice: You have the right to appeal a denial of this application to the Board of Trustees, Village of Babylon, 153 West Main Street, Babylon, New York 11702, who must fully explain the reasons for such denial in writing seven days after receipt of an appeal.

I hereby appeal:

Signature \_\_\_\_\_

Date \_\_\_\_\_



November 21, 2016

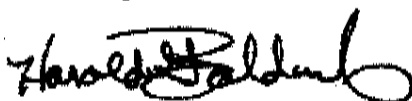
To: Village of Babylon, Town Clerks Office  
153 West Main Street  
Babylon, NY 11702

Attention: Kristina Everitt

Dear Kristina,

Please accept this letter of authorization for my "owners representative", and on my behalf, Jeanette Prymas Parenti (516-510-7134), to submit or retrieve any materials pertaining to my property at 50 Thompson Avenue in the Village of Babylon. Thank you very much.

Sincerely,



Harold Baldauf  
(516) 351-2487

50 Thompson Ave.

ZBA decision letter to  
be picked up by  
Jeanette Parenti w/ an  
authorization letter from  
owner Harold Baldauf

Copy: Nick Feihel, Mark Anthony Architects

HAROLD &amp; JESSICA BALDAUF

50 Thompson Avenue  
Babylon, NY 11702

Verbatim for Harold Baldauf, 50 Thompson Avenue

Hearing date: June 15, 2016

19:05

Mr. Munisteri: Good evening members of the Board, Mr. Chairman, my name is Mark Anthony Munisteri, architect. I'm appearing with my client Harold Baldauf of 50 Thompson Avenue in the Village of Babylon. This evening, as you've heard, we are requesting several variances, one to maintain a garage addition which requires a side yard setback variance, a proposed accessory structure which requires a side yard setback as well as a height variance, and to allow a structure over the allowable square footage. I'd like to briefly discuss each one. First, I'd like to apologize, I had this written out nicely on paper and forgot to print it so I'm reading it off my phone and it looks a little weird. Uh, the first one I'd like to discuss is the garage. The existing garage is located 4.6 feet off the south side, uh south side property line. My client added a roof over on the west of the rear of the garage to allow for shaded area around the existing pool. This roof over is 5.27 feet from the property line where 15 is required. In addition, he added a pergola to the north side of the garage for aesthetics and subtle shaded area, which meets all the side yard setbacks.

Next is the two story accessory structure. This structure will be mostly used for storage of their lawn tractor and jet skis. The proposed location of the accessory structure is located exactly in the location of the original shed, which is 3.67 feet from the south property line where 15 feet is required. Also we are requesting to increase the height limits from 15 to 21.1 feet. The existing location of the front wall of the shed, which would be east, will be retained in the new shed because the electric for the pool and the bulkhead are ran there, as is the pool equipment. I'd like to submit a couple of pictures in color. You have most of the pictures, but these pictures specific if that would be okay? Which both are contained within this new shed. The accessory structure in not out of character or proportions to the immediate neighborhood.

Lastly, the structure in question is a treehouse. The high point of the treehouse is a total square footage of 105 square feet, and the lower platform is another 87 square feet for a total of 192 square feet from 90 is permitted. I'll answer any questions the Board may have.

Mr. Conroy: You finished now?

Mr. Munisteri: Yeah.

Mr. Conroy: No I really...alright.

Mr. Munisteri: Yeah.

Mr. Conroy: I have a few questions.

Mr. Munisteri: Fire away.

Mr. Conroy: What's the, alright, what is the square feet of the treehouse?



Mr. Munisteri: 192 square feet, well it's actually the upper half of it if you look at the picture you will actually see it. The lower part they are counting which is a deck area. Which is two or three steps up. But the unit above is 105 square feet so it's roughly 8x12. Which is the upper end of the tree. I also submitted a pretty good picture of it.

Mr. Conroy: Does the homeowner have a CO for it.

Mr. Munisteri: No sir, this is maintain-- we are asking to legalize the structure.

Mr. Conroy: When was the tree house built?

Mr. Munisteri: We reused the old deck from the house to build the treehouse. So it was built when we built the house. In stead of throwing it away, we built the treehouse.

Mr. Conroy: Can you give me the year, please?

Mr. Munisteri: 2015.

Mr. Conroy: 2015.

Mr. Munisteri: 2015, yeah.

Mr. Conroy: 2015. So also, do you have a CO for the garage?

Mr. Munisteri: The garage is been updated on the exterior. It was part of the original CofO

Mr. Conroy: Roof and siding, Is that correct.

Mr. Munisteri: Yes that's correct. But it's the existing structure itself.

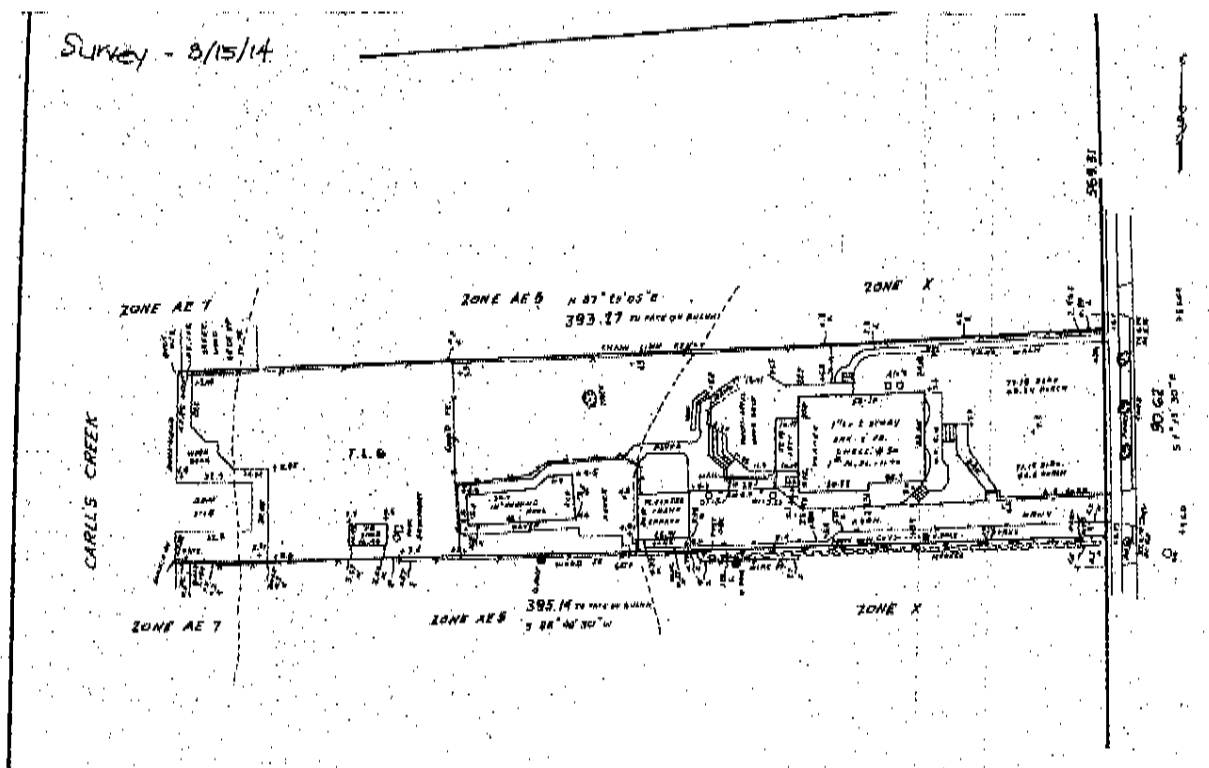
Mr. Conroy: I haven't asked you when that was built, because it could be a very very old house with a very very old garage.

Mr. Munisteri: So the original house was quite an old, so I'm going to guess in the late twenty's early thirties, the garage was originally constructed.

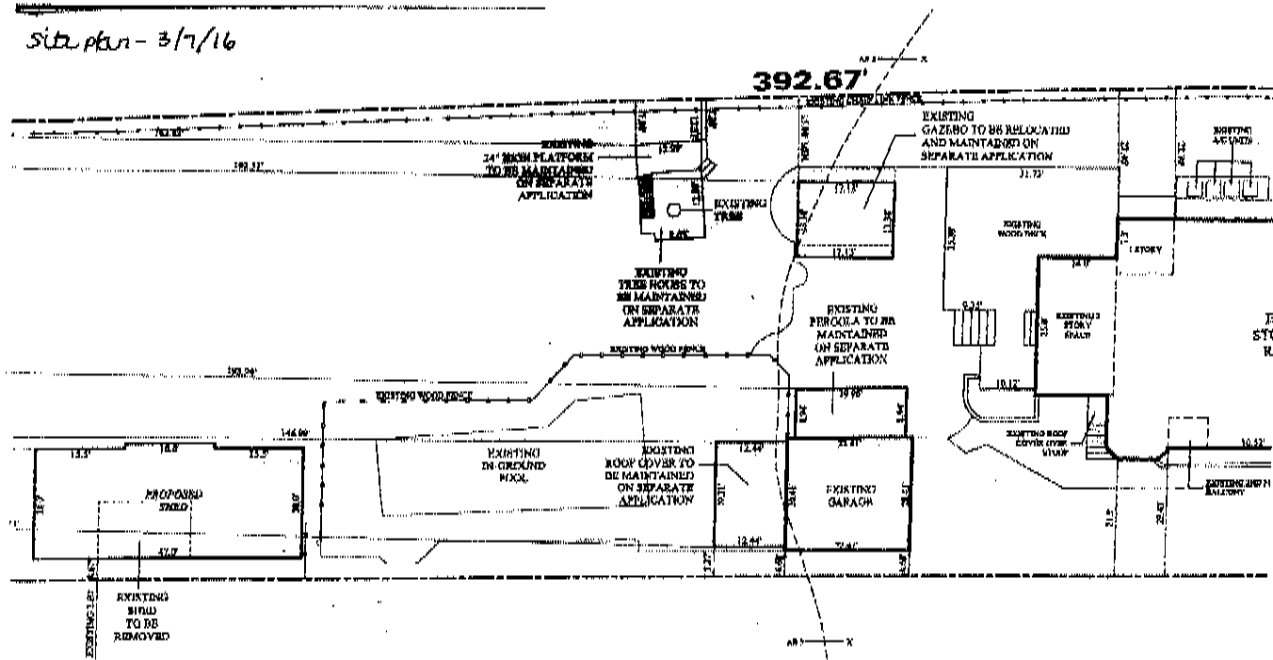
Mr. Conroy: And the total square feet? For the accessory building 23:49

Mr. Munisteri:

Mr. Conroy:

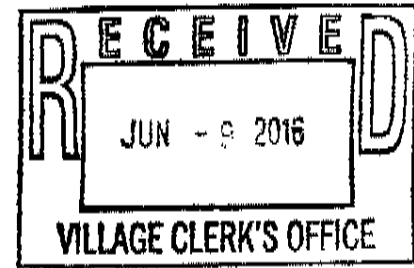






June 5<sup>th</sup>, 2016

Dear Babylon Village Board of Appeals,



*Baldauf Treehouse*  
*5751*  
*Complaint Mr. & Mrs. Harris*  
*58 Thompson Ave*

**Re:** 50 Thompson Ave, Babylon, NY 11702 request for variances 6-15-16:

We have great concern that allowing all variances requested would impinge upon our privacy we now enjoy and decrease the value of our property.

We are very grateful that Building Zone Ordinance of Babylon Village sets the minimum side yard setback of 15 ft. in place and it should always adhere to it. Especially when there is ample yard width existing. It does not permit a resident to invade a neighbor's privacy. Any requests of buildings to be allowed closer will create very close walls of buildings and change our grounds to that of living in Queens. This will certainly decrease our property value. There is plenty of land, 80 ft. between 15 ft. setbacks to build on if they so wish and allowed. Limited space is not the issue on this 1 acre lot.

We are not clear what does *maintain* a garage and accessory building mean? The resident just completed restoring the existing garage by adding a new roof, exterior paneling and building an extension to back of garage. Did these buildings ever have the required variances to start with? If not, please kindly mandate that the existing accessory building (shed) be moved to the proper 15 ft. side setback requirement. This will be a reminder of any future building to start at the proper 15 ft. from side of property line. Presently there are **also** two large framed canvas storage sheds within three ft. of the shared property line.

In regards to the construction of *accessory building*... why does it have to be over 2 stories high? Does an *accessory building* include living space? Again we are grateful that Building Zone Ordinance of Babylon Village sets the maximum height limits of *accessory building* of 15 ft. in place. Adding more height will invade our privacy and lose the spacious feeling of Thompson Ave. There is plenty of land to change the *accessory building* plans to sprawl across their yard starting 15ft from side property line. On Carlls River an osprey tower was taken down because it was over the permitted height limit and the tower was to add beauty of nature to the area. An accessory building should never be more than 15 ft. in height.

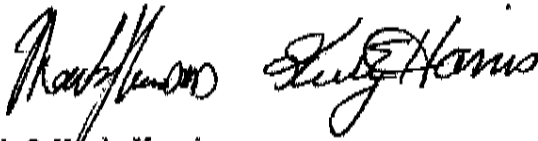
In regards to the, *90 ft. tree house*: The existence of this stated tree house has definitely decreased our privacy by allowing direct elevated views of our once private yard. A 6 ft. fence no longer provides us privacy. By doubling the tree house size by *192 sq. ft.*, will only decrease our privacy that much more with no solution. We were totally unaware that the existing tree house was *permitted*.

We have validated concerns. Mr. Baldauf has previously widened the driveway with blacktop and pavers to within 6 to 8 inches of our shared property line. Then continued to stone gravel the entire length of driveway from the pavers to the property line. He uses this area to park within one foot of the property line. This violates the "Greenway zone" of 2-3



ft. buffer. This encroachment has damaged and continues to damage by vehicle contacts the existing 40 plus years old privet hedge. This hedge is our only existing privacy barrier. We would like to maintain a civil relationship with our neighbors... these proposed changes would definitely jeopardize that. In short, 50 Thompson Ave. property has more than sufficient acreage to place structures adhering to the 15 ft. side setbacks and keeping within height requirement without changing the *park like* character of Thompson Ave properties.

Respectfully submitted,

Handwritten signatures of Mark and Keely Harris in black ink.

Mark & Keely Harris  
58 Thompson Ave  
Babylon, NY 11702

*Stull*

PLANNING BOARD  
James M. Slack, *Chairman*

Edward J. McCarthy  
Judy R. Skillen  
George W. Smith  
Frank Seibert  
Robert Waters



153 West Main Street  
Babylon Village  
New York 11702-3414  
(631) 669-1300

March 31, 2016

Mr. Harold Baldauf  
50 Thompson Avenue  
Babylon, NY 11702

Re: SCTM: 0102-013-02-006  
Zone: Residence A-11

Dear Mr. Baldauf:

At the regular meeting of March 31, 2016, the Planning Board reviewed your application to construct a second story deck, measuring 20' X 9.5', on a **proposed** accessory building.

This proposed accessory building will require Zoning Board Approval for side yard setbacks, height, as well as variances for existing structures located on the subject property. The Board found the deck to be compatible with the area. There will be no external stairways to the ground, nor will the deck be enclosed, as outlined in the Code of the Village of Babylon. Additionally, all exterior lighting shall be maintained and shielded, as not to shine into adjacent or nearby properties.

The Planning Board **Conditionally Approves** this second story deck subject to the **Approval** by the Zoning Board Appeals for any and all required variances, that would permit this accessory building to be built, as designed.

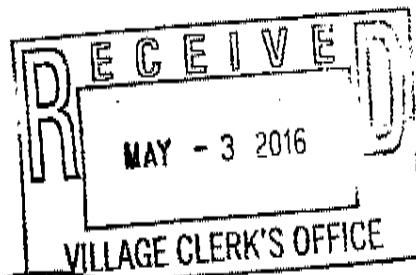
All construction will be subject to final approval by the Village Building Inspector.

Very truly yours,

James M. Slack  
Chairman

Cc: Ralph Scordino, Mayor  
Robert Brink, Planning Board Attorney  
Stephen Fellman, Building Inspector  
Bruce Humenik, Zoning Board of Appeals  
Pat Carley, Village Clerk

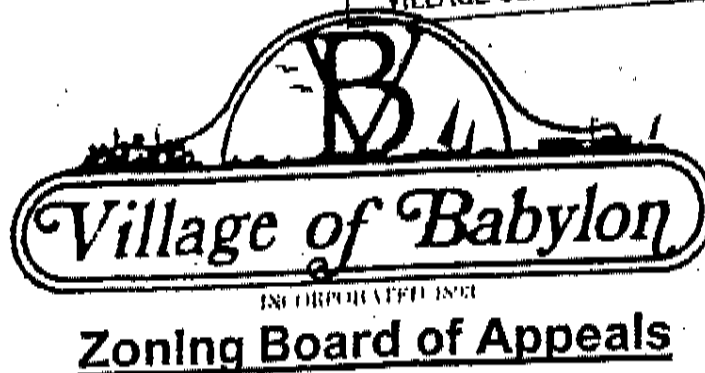




13-2-6  
A-11  
AE-5  
AE-7

CITY OF THE  
BUILDING INSPECTOR

Stephen Bellmont  
Building Inspector



133 West Main Street  
Babylon Village  
New York 11702-3411  
(631) 669-1300

Address: 50 THOMPSON

Zone: A-11

Permitted Setback	Proposed Setback	Variance
<input type="checkbox"/> Front Yard _____	Front Yard _____	_____
<input checked="" type="checkbox"/> <sup>TRASH HOUSE</sup> <sup>GARAGE</sup> Min. Side Yard <u>15'</u>	Min. Side Yard <u>22.5' 27</u>	<u>7.5'</u> <u>9.73'</u>
<input type="checkbox"/> Tot. Side Yard _____	Tot. Side Yard _____	_____
<input type="checkbox"/> Rear Yard _____	Rear Yard _____	_____
<input checked="" type="checkbox"/> <sup>SHED</sup> Height Limits <u>15</u>	Height Limits <u>21.1'</u>	<u>6.1'</u>
<input type="checkbox"/> Lot Coverage % _____	Lot Coverage % _____	_____
<input type="checkbox"/> Lot Width _____	_____	_____
<input type="checkbox"/> Two Family _____	_____	_____

• Enforcement Action: \_\_\_\_\_

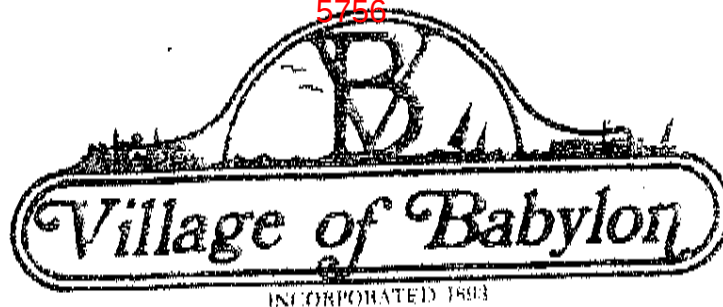
• Other: TREEHOUSE / PLAYGROUND - 90 S.E. MAX - 192 SF PROP.

• Renewal: \_\_\_\_\_





ZONING BOARD OF APPEALS  
Bruce E. Humenik, *Chairman*  
John J. Conroy, *Secretary*  
Christopher Resch  
Rachael A. Seelfo  
Frank Seibert  
Jeffrey C. Weber



152 West Main Street  
Babylon Village  
New York 11702  
(631) 669-1569

May 25, 2016

Mr. Theodore Klein, Sr. Planner  
Suffolk County Dept. of Planning  
H. Lee Dennison Building  
100 Veterans Memorial Hwy., 11<sup>th</sup> Floor  
P.O. Box 6100  
Hauppauge, NY 11788-0099

Dear Mr. Klein,

Enclosed please find the legal notice for the June 15, 2016 hearing of the Zoning Board of Appeals. There are four (4) applications with Notices of Referral.

Sincerely,

Kristina Everitt  
Secretary to the Zoning Board of Appeals

Enclosures

**PUBLIC NOTICE  
BOARD OF APPEALS  
VILLAGE OF BABYLON**

**PURSUANT to the provisions of Article VII of the Building Zone Ordinance of the Village of Babylon, NOTICE IS HEREBY GIVEN that the Board of Appeals of the Village of Babylon will hold a public hearing at 7:30 P.M. on Wednesday, June 15, 2016 in the Municipal Building, at 153 West Main Street, Babylon, New York to consider the following applications:**

- 1. Application of John E. Damianos of 400 West Main Street LLC c/o Damianos Realty Group, 222 Middle Country Road, Suite 300 Smithtown, NY 11787 for permission to maintain a parking lot on the southwest corner of Montauk Highway and Little East Neck Road, Babylon New York for parking associated with 400 West Main Street Office Building, Babylon, NY. Property located in Residence O District. Suffolk County Real Property Tax Map District 0102, Section 12, Block 2 Lot 27.2. Application made in accordance with Sections 365-17 and 365-35.**
- 2. Application of Dr. Douglas Keller 420 West Montauk Highway, Suite 3, Babylon, NY, owner of Village Professional Building, 420 West Main Street, Babylon, NY, for permission to continue a professional use as a three unit professional building for the practice of medicine at the premises located at 420 West Main Street, Babylon, NY. Property located in Residence O District. Suffolk County Real Property Tax Map District 0102, Section 12, Block 2 Lots 33 and 34. Application made in accordance with Sections 365-17 and 365-35.**
- 3. Application of John Scharf, 83 Sumpwams Avenue, Babylon, NY, for permission to construct additions to the dwelling on the premises located at 83 Sumpwams Avenue, Babylon, NY requiring variances to reduce the front yard setback from 35 feet required to 31.5 feet proposed; to reduce the minimum side yard setback from 15 feet required to 4 feet proposed; to reduce the total side yard setback from 30 feet required to 14.23 feet proposed and to maintain a shed east of the property line. Property located in Residence A-11 District. Suffolk County Real Property Tax Map District 0102, Section 16, Block 2, Lot 69. Application made in accordance with Sections, 365-13 and 365-3.**
- 4. Application of Mark Anthony Munisteri, Mark Anthony Architects, 1563 Bellmore Avenue, Bellmore, NY 11710, agent of owner Harold Baldauf, 50 Thompson Avenue, Babylon, NY, for permission to maintain a garage, accessory building and a structure requiring variances to reduce the minimum side yard setback of 15 feet required for the garage to 5.27 feet proposed; reduce the minimum side yard setback of 15 feet required for**



**Real Property Tax Map District 0102, Section 20, Block 1, Lot 71.  
Application made in accordance with Sections 365-13, 365-7.**

**APPLICANTS OR THEIR DULY APPOINTED REPRESENTATIVES MUST  
APPEAR IN PERSON AT THE ABOVE HEARING.**

**BRUCE HUMENIK, CHAIRMAN  
JOHN J. CONROY, SECRETARY**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK ::::: PART 34

-----X

In the Matter of the Freedom of Information  
Law Request of John Lepper,

Petitioner,

-against-

INDEX NO.  
000379-2019  
**CONFERENCE**

Village of Babylon; Jean Marie Parker,  
Village Clerk, Records Access Officer;  
Ralph Scordino, Mayor; Kevin Muldowney,  
Deputy Mayor; Robyn Silvestri, Village Trustee;  
Tony Davida, Village Trustee; Mary Adams,  
Village Trustee; Stephen Fellman,  
Village of Babylon Building Inspector;  
Suzanne Schettino, Department of Public Works;  
Gerard Glass, Esq., Village of Babylon Attorney,  
Records Access Officer; Deborah Longo, Planning  
Board, Village of Babylon; Each Individually and  
in the Official Capacity,

Respondents.

-----X

June 30, 2021  
Riverhead, New York

B E F O R E:

Hon. Joseph C. Pastoressa  
Supreme Court Justice

A P P E A R A N C E S:

CORY H. MORRIS, ESQ.  
Attorney for Petitioner  
135 Pinelawn Road, Suite 250s  
Melville, New York 11747  
BY: CORY H. MORRIS, ESQ.

VILLAGE OF BABYLON  
Attorney for Petitioners  
153 West Main Street  
Babylon, New York 11702  
BY: MATTHEW T. MCDONOUGH, ESQ.



CONFERENCE

2

1 COURT CLERK: This is the *Matter of*  
2 *John Lepper against the Village of Babylon,*  
3 *Jean Marie Parker, Village Clerk, et al.*

4 Counselors, please put your  
5 appearances on the record.

6 MR. MORRIS: Attorney Cory Morris  
7 for petitioner John Lepper, 135 Pinelawn Road  
8 Suite 250s, Melville, New York 11747.

9 Good morning, your Honor.

10 THE COURT: Good morning, Counsel.

11 MR. MCDONOUGH: Good morning, your  
12 Honor.

13 Matthew McDonough for the respondent  
14 Village of Babylon, 153 West Main Street,  
15 Babylon, New York 11702.

16 THE COURT: Good morning, Counsel.

17 Okay. So the record should reflect  
18 the Appellate Division sent this case to me  
19 to conduct an in camera review of requested  
20 documents pursuant to FOIL, requested by  
21 Mr. Morris, and counsel for the Village has  
22 provided the documents, copies of the  
23 documents that were provided to Mr. Morris, I  
24 believe, correct, right? Weren't there some  
25 redacted that were provided?

CONFERENCE

3

1 MR. MCDONOUGH: Correct.

2 THE COURT: Right. You look  
3 inquisitively, Mr. Morris.

4 MR. MORRIS: Your Honor, may I  
5 remove my mask?

6 THE COURT: You may.

7 MR. MORRIS: Your Honor, this Court  
8 was reversed on the fact that the  
9 administrative remedies were not provided.  
10 The petition sought, among other things,  
11 attorneys fees, the records to be produced.  
12 We later argued on appeal, again, narrowing  
13 the record that we have here.

14 I just want to state for the Court,  
15 just so we're clear: In your Honor's  
16 decision, two times it stated that all the  
17 records were produced, but they were not. So  
18 I'd like to know what records were not  
19 produced, on the record, so we know what  
20 we're talking about.

21 THE COURT: All right, Counsel.

22 And for the record: I vehemently  
23 disagree with the decision of the Appellate  
24 Division. I, frankly, don't even understand  
25 it, and to my mind it's contrary to well



CONFERENCE

4

1 existing law where the administrative  
2 remedies were not exhausted before you got  
3 here. But be that as it may, I don't sit in  
4 45 Monroe Place, and unless and until I do, I  
5 have to live with the decisions of that  
6 court, so be it.

7 I don't even know what you're  
8 talking about, Counsel, quite frankly. What  
9 I have in front of me now is counsel for the  
10 Village, pursuant for the Appellate Division  
11 order, has provided me with, for in camera  
12 review, everything in their mind that you  
13 requested pursuant to the FOIL, for me to  
14 review to determine whether or not they fit  
15 within any of the exceptions under the FOIL  
16 law which would prevent me from disclosing  
17 those documents to you.

18 Now, what are you saying?

19 MR. MORRIS: Judge, may I inquire  
20 how many documents were produced? Is there  
21 an index? I mean, again, I'm saying, your  
22 Honor, in your decision it stated that they  
23 provided all records responsive.

24 THE COURT: Hand me my decision.

25 MR. MORRIS: Last page. It's

CONFERENCE

5

1 three pages, your Honor. And at the bottom  
2 you'll note as part of the record on appeal,  
3 your Honor.

4 THE COURT: Right.

5 MR. MORRIS: (Handing.)

6 Again, what we sought, your Honor,  
7 was a declaration for a violation of the  
8 Public Officers Law, we sought retraining and  
9 attorney's fees. Because the respondents  
10 handed over a phone book that might have  
11 contained the name responsive doesn't mean  
12 they complied with the law. And that's what  
13 we're seeking here.

14 THE COURT: Who said that they did,  
15 Counsel? What I said is, we are here this  
16 morning for my rulings on in camera review of  
17 the documents that were provided subsequent  
18 to the Appellate Division decision. I don't  
19 know why I'm having trouble communicating  
20 that to you.

21 MR. MORRIS: No, I understand, your  
22 Honor. But in addition to that, we sought  
23 declarations, we sought attorney's fees and  
24 retraining.

25 THE COURT: Why don't we take one



CONFERENCE

6

1           thing at a time.

2                   MR. MORRIS: Understood.

3                   THE COURT: Okay. Mr. McDonough, do  
4           you wish to say anything for the record?

5                   MR. MCDONOUGH: I think, your Honor,  
6           for the two narrow issues, one is the e-mail  
7           that was redacted under Public Officers Law  
8           87(2)(b) and 89(2)(b), and then the  
9           electronic mailings which were not turned  
10          over because they were intra-agency. On the  
11          first ones --

12                  THE COURT: Which, by the way, is  
13          referenced in my decision. So contrary to  
14          what Mr. Morris just put on the record, I  
15          didn't indicate everything was turned over.  
16          I didn't indicate that. It specifically  
17          referenced that they weren't turned over  
18          because the Village believed them to be  
19          exempt from disclosure pursuant to the  
20          inter-office, intra-office e-mails.

21                  MR. MORRIS: Understood. And what  
22          I'm quoting is part of record on appeal 181,  
23          quote, The respondents have asserted that all  
24          responsive documents have been provided, end  
25          quote.

CONFERENCE

7

1 THE COURT: Responsive documents  
2 means documents that are required to be  
3 disclosed under FOIL.

4 MR. MORRIS: Your Honor, just so the  
5 Court is aware, and we argued this  
6 extensively, what wasn't provided, although  
7 it existed, was a letter from the mayor about  
8 treehouses, among other things. I know it  
9 might seem rudimentary in this case over a  
10 treehouse. That was withheld.

11 THE COURT: Mr. McDonough, is that  
12 one of the documents that you provided for  
13 me?

14 MR. MCDONOUGH: I don't believe it  
15 is.

16 THE COURT: Is there such a  
17 document?

18 MR. MCDONOUGH: I'm not entirely  
19 sure.

20 THE COURT: You're not entirely  
21 sure?

22 How do you know it exists?

23 MR. MORRIS: Because I had it.  
24 Because it's in the federal court record.  
25 Because a letter from the mayor about



CONFERENCE

8

1 treehouses, among -- I mean, you can't make  
2 this up.

3 THE COURT: No, no, I understand.  
4 But, Mr. Morris, maybe I didn't have enough  
5 coffee this morning. You have what you're  
6 asking the Court to provide?

7 MR. MORRIS: I have one of the  
8 documents that should have been produced.  
9 And this is the problem, your Honor. I don't  
10 know what they have -- litigation. But when  
11 I say "they," the respondents. I don't know  
12 what they hold.

13 THE COURT: Of course. That's the  
14 reason for the application. But let's stick  
15 with the stuff you don't have, not what you  
16 already have.

17 MR. MORRIS: No, no, no. But to  
18 look at me and say, what is it that you don't  
19 have? I don't know that. I have a  
20 litigation hold that says --

21 THE COURT: I didn't ask you to tell  
22 us what you don't have, I asked you to tell  
23 me what you have. You're sitting here  
24 arguing to me, Judge, I need a letter from  
25 the mayor. And I say, okay, great. And I

CONFERENCE

9

1 ask your adversary, where's the letter? And  
2 you say, I have it.

3 MR. MORRIS: Judge, perhaps an  
4 inquiry as to whether the documents at issue  
5 were segregated is an easy question to be  
6 answered by the Village attorney. Were the  
7 e-mails that were requested segregated?  
8 That's what I would ask this attorney.

9 THE COURT: Look, Mr. McDonough, why  
10 don't you speak for the record. You have  
11 this FOIL request. What have you provided in  
12 response to this FOIL request? What have you  
13 withheld in response to this FOIL? And is  
14 there anything you withheld in response to  
15 this FOIL request that was not provided to  
16 the Court for this morning's rulings on the  
17 in camera review?

18 MR. MCDONOUGH: No. Everything was  
19 provided here for the in camera review. On  
20 the first thing, it was a redacted e-mail.  
21 That was provided to Mr. Morris. That  
22 redaction was to preserve personal  
23 information. It's inappropriate to include  
24 identification of confidential sources. And  
25 the third parties were written letters



CONFERENCE

10

1 according to the *Church of Scientology New*  
2 *York versus State*, 61 AD2d 942. When a  
3 person's identity can still be ascertained  
4 despite the release of his or her name from  
5 the record, other aspects of the record in  
6 their entirety may be withheld. That's from  
7 a committee on open governments --

8 THE COURT: I didn't want you to  
9 argue the be merits. We'll get to that. I  
10 mean, for some reason we're having trouble  
11 getting this thing queued up.

12 As I said when I first took the  
13 bench, the Village, in response to the  
14 Appellate Division decision, provided for my  
15 in camera review documents. Some documents  
16 were provided to counsel in redacted form.  
17 The Village, consistent with the Appellate  
18 Division requirement, provided me now  
19 unredacted versions of those forms so that I  
20 could put them side by side and decide  
21 whether or not, under the statute, your  
22 client is entitled to see the part that was  
23 redacted, right? You got it so far?

24 MR. MORRIS: Among others things,  
25 yes, your Honor.

CONFERENCE

11

1 THE COURT: What other things?

2 MR. MORRIS: Again --

3 THE COURT: Let's do things one at a  
4 time. You got it so far?

5 MR. MORRIS: I agree with what  
6 you're saying.

7 THE COURT: Excellent.

8 MR. MORRIS: But --

9 THE COURT: That's a very good  
10 start.

11 MR. MORRIS: But with a very strong  
12 caveat, right? There's only 20 documents and  
13 they're only e-mails; is that correct?  
14 That's what I'm looking for. Because I could  
15 then explain to you why I believe there's  
16 additional documentation.

17 THE COURT: We'll get to that,  
18 Counsel. Let's not put the cart before the  
19 horse. Why don't we cover what we have,  
20 okay? I'm not going anywhere. You're my  
21 only case today. And you can tell me, Judge,  
22 you know I have information that leads me to  
23 believe there's additional documents -- we  
24 can get to that. But let's get with what we  
25 have already.



CONFERENCE

12

1 MR. MORRIS: So --

2 THE COURT: Hold on a minute.

3 Counsel, really, you're trying my patience  
4 and I'm a patient man.

5 The second -- the second response  
6 was a ream of documents that were not  
7 provided at all, so I reviewed those as well.  
8 So you with me so far?

9 So, so far the Village has provided  
10 e-mails where they redacted information and  
11 then gave me the unredacted version so I  
12 could check it, and then they gave me a whole  
13 ream of information that wasn't provided at  
14 all -- maybe that's what you're referring to,  
15 I don't know, we'll see -- that I had to  
16 review to see if it fits within FOIL.

17 So now this morning I'm going to  
18 hear argument from you and from Mr. McDonough  
19 as to why this should or should not be  
20 disclosed under FOIL. And then when we're  
21 done with all of that, you can then make an  
22 application, I mean, if you believe you've  
23 got evidence or proof or anything you want to  
24 bring to the Court's attention that, hey,  
25 Judge, there's more stuff out there, you

CONFERENCE

13

1 know, I have a good faith basis for saying  
2 that, you tell me what it is, we'll address  
3 it. But let's cover what was presented to me  
4 first. Fair enough?

5 MR. MORRIS: Fair enough.

6 THE COURT: Good. All right.

7 You bear the burden, Mr. McDonough.  
8 Why is it, and I know you started but I'll  
9 ask you to repeat it for the record, why is  
10 it that these records should be redacted, the  
11 e-mails that were sent, and why is it that  
12 that entire, I'm referring to it as the  
13 "second package," but you're familiar with it  
14 and we'll deal with it for public purposes  
15 what was presented when the proceeding is  
16 over, why is it that none of those documents  
17 were presented to Mr. Morris for his client's  
18 benefit, okay?

19 MR. MCDONOUGH: Okay.

20 THE COURT: Go ahead.

21 MR. MCDONOUGH: On the first one,  
22 your Honor, that is the redacted and  
23 unredacted e-mails, the redacted material, as  
24 you said, we have the burden to prove that  
25 there is the exemption to the FOIL law. It's



CONFERENCE

14

1 inappropriate to identify the confidential  
2 source. These are third parties who had  
3 written to the Village in *Church of*  
4 *Scientology of New York versus State*, 61 AD2d  
5 942, affirmed by the Court of Appeals, 46  
6 NY2d 906. And if a person's identity can  
7 still be ascertained despite the deletion of  
8 his or her name from the record, other  
9 aspects of the records in their entirety may  
10 be withheld. That's a Committee on Open  
11 Government's Opinion, AO-10637.

12 THE COURT: Okay. That's your  
13 argument on e-mails.

14 MR. MCDONOUGH: Correct.

15 THE COURT: Okay. Now, what about  
16 this other stuff?

17 You know what, why don't we do this.  
18 Mr. Morris, would you like to -- what we  
19 could do here is, since they're separate, you  
20 can address the arguments seriatim. In other  
21 words, you can respond to Mr. McDonough on  
22 this and then I'll let him move on.

23 So what, if anything, do you have to  
24 say? He cited for me a Court of Appeals case  
25 that indicates that the identity of a person

CONFERENCE

15

1           complaining to a municipality about something  
2           doesn't get disclosed under FOIL. What do  
3           you say?

4                   MR. MORRIS: First, presumably that  
5           applies to all records; otherwise, it would  
6           be a blanket exemption, which *Data Tree* is  
7           the Court of Appeals case, D-A-T-A Tree.  
8           I'll be glad to provide your Honor with any  
9           of these citations, if it pleases the Court.

10                   THE COURT: Yes, please.

11                   MR. MORRIS: Which would be -- a  
12           blanket exemption would be against the  
13           Freedom of Information Law and the Public  
14           Officers Law. The response can't just say  
15           complainant, and therefore you don't get it.  
16           In fact, I argued this matter in front of the  
17           Matter of versus -- in front of the First  
18           Department. We submitted a case; we didn't  
19           argue it. But it was the *Matter of Dioso*  
20           *Faustino*, D-I-O-S-O, F-A-U-S-T-I-N-O.

21                   THE COURT: Is there an Appellate  
22           Division, handed a decision down on it?

23                   MR. MORRIS: First Department. They  
24           handed the decision down. They said, Either  
25           you produce records afterwards, you can't



CONFERENCE

16

1 just say investigation and then turn over  
2 records.

3 THE COURT: But that specifically  
4 spoke to identity of a person reaching out to  
5 a municipality?

6 MR. MORRIS: No, it didn't, your  
7 Honor. But --

8 THE COURT: But that's what we have  
9 in front of us.

10 MR. MORRIS: For that matter, if  
11 we're going to address that, again, I don't  
12 have the records so I'm going to do this sort  
13 of from the hip --

14 THE COURT: No, you're not. You're  
15 going to get full appraisal.

16 And for the record just so it's  
17 clear: The Court has reviewed the e-mails,  
18 everything that was redacted in the e-mail.  
19 And what I'm going to do so you have a record  
20 on appeal, is I will provide, I'm going to  
21 put it under seal, the unredacted version and  
22 the redacted version and make it a court  
23 exhibit, under seal, only to be opened by the  
24 Appellate Division if there's an appeal of my  
25 rulings here this morning.

CONFERENCE

17

1                   So for the record: I've reviewed  
2                   those e-mails. The only thing that was  
3                   redacted from those e-mails, you were given  
4                   everything except the name of the person who  
5                   registered the complaints and certain  
6                   identifying information that would, it seems  
7                   clear, would make who that person is, who he  
8                   or she is. So that was redacted.

9                   In other words, only items that  
10                  obscured the identity of the person  
11                  registering complaints with the municipality,  
12                  with the Village, but none of the substance  
13                  of the complaints. None of anything that was  
14                  said by the person to the Village was  
15                  redacted. All of that was provided to  
16                  counsel. The only thing that wasn't provided  
17                  was the name of the person.

18                  Okay. So now, speak to that issue.  
19                  What under FOIL entitles you to that, and how  
20                  is that not under the *Church* case cited by  
21                  counsel and the Court of Appeals?

22                  MR. MORRIS: Your Honor, I'd like to  
23                  address that. First, there was a full  
24                  prosecution against Mr. Lepper. We'll return  
25                  that. But first, I'll answer your Honor's



CONFERENCE

18

1 question.

2 THE COURT: Good.

3 MR. MORRIS: Public Officers Law  
4 Section 87(2)(e), subsection Roman numeral  
5 iii, lower case Roman numeral iii --

6 THE COURT: Hold on. Give me a sec.

7 (2)(e)(iii): Identify confidential  
8 source or disclose confidential information  
9 relating to a criminal investigation.  
10 (Reading.)

11 Has nothing to do with this. Why  
12 were you citing that to the Court?

13 MR. MORRIS: Because in the absence  
14 of any evidence of any person received an  
15 expressed or implied promise of  
16 confidentiality -- again, it can mean in the  
17 prosecution against Mr. Lepper -- that's  
18 inapplicable. (Reading.)

19 THE COURT: What were you citing to  
20 me?

21 MR. MORRIS: I'm citing to you The  
22 Matter of *Exoneration Initiative versus New*  
23 *York City Police Department*.

24 THE COURT: What case is that?

25 MR. MORRIS: 114 AD3d 436, 440

CONFERENCE

19

1 [First Department].

2 Even more so, your Honor --

3 THE COURT: And you're saying that  
4 case stands for the proposition that in the  
5 absence of a confidentiality agreement in a  
6 criminal prosecution and the identity of any  
7 communiques to a Village gets disclosed under  
8 FOIL.

9 MR. MORRIS: No, your Honor. I'm  
10 saying these cases don't exist squarely.  
11 Like the case of *Church of Scientology*, that  
12 case is not squarely on point in the Village  
13 prosecution, but that's what we have here.

14 THE COURT: No, no. How is it not?

15 MR. MORRIS: How is it not, your  
16 Honor? I think more applicable is *Friedman*  
17 *versus Rice*, which was heard by the Court of  
18 Appeals.

19 THE COURT: Why you tell me why  
20 *Church* is not applicable first.

21 MR. MORRIS: Your Honor, may I ask  
22 for the citation one more time because --

23 THE COURT: 46 NY2d 906.

24 MR. MORRIS: Your Honor, I'm going  
25 to read the entire case on the record.



CONFERENCE

20

1 THE COURT: No, you're not.

2 MR. MORRIS: It's a small case.

3 THE COURT: No, you're not. Read to  
4 me the parts that you feel are applicable or  
5 how that makes inapposite.

6 MR. MORRIS: 46 NY2d 906 is a Court  
7 of Appeals case. It's 1979; so about  
8 41 years ago, your Honor.

9 THE COURT: *Brown v. Board of Ed* was  
10 handed down in 1951, does that make it a bad  
11 case, Counsel?

12 MR. MORRIS: No, no. I'm just  
13 saying, the law has developed quite a bit  
14 since.

15 THE COURT: If you got a later, more  
16 recent case that overrules *Church* or what it  
17 stands for, I'm all ears.

18 MR. MORRIS: I'm looking at the  
19 record. It says: The record on the appeal  
20 is wholly insufficient to sustain the refusal  
21 to disclose materials sought by petitioner  
22 under the provisions of the Freedom of  
23 Information Act. (Reading.)

24 It goes on to state: In support of  
25 the denial of access, the State officials

CONFERENCE

21

1 have tendered only references to sections,  
2 subdivisions and subparagraphs of the  
3 applicable statute and conclusory  
4 characterizations of the records sought to be  
5 withheld, period. (Reading.)

6 There is no tender of any factual  
7 basis of which to determine whether the  
8 materials sought either fell outside the  
9 scope of mandated disclosure under former  
10 section 88 -- I'm going to omit the  
11 citation -- or come within the exceptions  
12 specified in subdivision 2 of present  
13 section 87 of the Public Officers Law.  
14 Again, I'm going to omit the citations.  
15 Period. Nor is there any justification for  
16 remittal for in camera inspection, period,  
17 end quote. (Reading.)

18 Judge, should I continue reading  
19 this decision?

20 THE COURT: Well, Mr. McDonough,  
21 what he's reading to me sounds like it  
22 supports his position.

23 So why do you cite that to me?

24 MR. MCDONOUGH: I cited it because  
25 it was the inappropriate identification of



CONFERENCE

22

1 confidential information. But to be clear:  
2 We're seeking it under Exception No.  
3 87(2)(b), 89(2)(b), which is the denied  
4 disclosure would lead to invasion of privacy.

5 THE COURT: No, no. I understand.  
6 Hold on. One at a time.

7 I'm familiar with the statute and I  
8 know 87 refers to 89. But case law has to  
9 define what constitutes an invasion of  
10 privacy such that it warrants withholding.

11 Now, you cited the case for the  
12 Court; I haven't read the case yet. Counsel  
13 just read to me provisions that seem to  
14 support his side. So I'm asking you: Why  
15 did you cite that case?

16 MR. MCDONOUGH: In the decision it  
17 waives the right of privacy, and I thought  
18 that reasoning was important for the Court.

19 THE COURT: All right. It does.  
20 But that's certainly not precedent for the  
21 withholding. Is that all you got is that  
22 case?

23 MR. MCDONOUGH: Yes, your Honor.

24 THE COURT: All right.

25 So why don't you tell me what you

CONFERENCE

23

1 have.

2 MR. MORRIS: First, old isn't bad.

3 THE COURT: Now you like it. Now  
4 you like it. You didn't like it five minutes  
5 ago.

6 MR. MORRIS: But the reason I didn't  
7 like it, Judge, is because the law changed.

8 THE COURT: Counsel, give me cites,  
9 okay? I don't mean to rush you. Like I  
10 said, you're my only case today. What I like  
11 is precedent from Appellate cases. So far  
12 you've given me 114 AD3d 463, First  
13 Department case. Does that support what  
14 you're saying?

15 MR. MORRIS: Yes. Together with *The*  
16 *Matter of Friedman versus*, F-R-I-E-D-M-A-N  
17 *versus Rice*, 30 NY3d 461 [2017]. That's a  
18 New York Court of Appeals decision where  
19 Ronald Kuby, who was then Captain Rice,  
20 argued that just because complaints are made  
21 doesn't mean there's an automatic entitlement  
22 of privacy. And just, if your Honor is not  
23 familiar with the *Chasing the Friedmans*  
24 documentary and the case of *Friedman*, I know  
25 your Honor was a former prosecutor and might



CONFERENCE

24

1 be familiar with that high profile  
2 prosecution, it was an allegation over sexual  
3 offenses occurring to minor children, your  
4 Honor, in the Village of Great Neck, or the  
5 Municipality of Great Neck, which is also  
6 quite a closed knit community. And yet the  
7 Court of Appeals, and the case went all the  
8 way up there, said that's not enough. And,  
9 your Honor, just to be clear --

10 THE COURT: Just for my edification:  
11 What's an example of what the Court of  
12 Appeals felt was enough? What constituted  
13 privacy worth protecting?

14 MR. MORRIS: Someone who sought to  
15 remain private. In other words, you know,  
16 I'm giving this under the confidentiality of  
17 privacy. Or for instance, your Honor, and I  
18 discussed this extensively in certain --

19 THE COURT: So if the Village  
20 provides me with an affidavit from this  
21 individual, and I'm not saying they would or  
22 could, saying I seek to have my privacy  
23 protected and my anonymity maintained, that's  
24 it?

25 MR. MORRIS: That seems like someone

CONFERENCE

25

1           who wants to remain private, your Honor,  
2           right?

3                   THE COURT:   So but for purposes,  
4           it's hypothetical because I don't have that,  
5           but if the Village were provide that and they  
6           could, then you agree --

7                   MR. MORRIS:   -- three years.

8                   THE COURT:   Well, well, I'm asking  
9           you that.  Is there some kind of latches  
10          that's --

11                  MR. MORRIS:   Well --

12                  THE COURT:   -- to that, or can a  
13          person say, hey, I just found out today from  
14          the Village attorney that Mr. Morris wants to  
15          undercover who I am and I would like my  
16          privacy protected?

17                  MR. MORRIS:   Well, yes, your Honor.  
18          I wouldn't call it latches.  Look, there was  
19          a prosecution here, which is why I start  
20          where I am.  There was a prosecution.  This  
21          man not only had a constitutional right, but  
22          Public Officers Law Section 89(a) is what we  
23          should discuss, because when there's a  
24          willful withholding of information, there's a  
25          violation that's occurred before your Honor.



CONFERENCE

26

1 THE COURT: What does the  
2 prosecution have to do with someone  
3 registering a complaint to the Town as to the  
4 Village and their anonymity being protected?  
5 What does one have to do with the other?

6 MR. MORRIS: Well, Judge, when  
7 there's a prosecution, you have a right to  
8 confront your accuser.

9 THE COURT: No, no. I understand  
10 that. I'm not sitting here trying your  
11 criminal case with your --

12 MR. MORRIS: No, no. Of course not.

13 THE COURT: -- Sixth Amendment right  
14 of confrontation. I'm sitting here in a  
15 civil matter where your client says, hey, I  
16 want to know who this person is.

17 MR. MORRIS: Yeah.

18 THE COURT: And I'm asking you, what  
19 authority do I have to uncover? Look, I'll  
20 read the cases you gave me. Are there any  
21 others you have?

22 MR. MORRIS: Judge, just to be  
23 clear: It seems like that I don't bear the  
24 burden, they do. And, Judge, to be clear  
25 again: The administrative record is what

CONFERENCE

27

1 binds this Court, it's what binds the  
2 Appellate Division.

3 THE COURT: When I ask you for  
4 cases, it's not a suggestion that you bear  
5 the burden. What happens with cases and the  
6 way I decide them is, I decide them according  
7 to the law and I follow the law. So the  
8 party that provides me with the correct law,  
9 that's the party that wins their case. If  
10 you provide me with law that says that Mr.  
11 McDonough hasn't met his burden for the  
12 following reasons, then you'll win. That's  
13 the reason why I'm asking you the cases, not  
14 because I'm asking you to carry any burden.  
15 The burden is on McDonough.

16 So far right now, Mr. McDonough,  
17 quite frankly, you haven't given the Court  
18 anything to hang its hat on to withhold this  
19 information.

20 Now, what I'm going to do when this  
21 hearing is done this morning, if you want,  
22 I'll give both of you an opportunity to brief  
23 the issues. This way I'm not, you know, so  
24 you're not shooting from the hip. In  
25 fairness to you, you can read the cases, you



CONFERENCE

28

1           can give me more cases. Happy to read them.  
2           But right now, that case you gave me  
3           certainly doesn't stand for that proposition.  
4           You know, I haven't read Mr. Morris' cases  
5           yet, but he's an officer of the court, he's  
6           telling me they say otherwise. So again,  
7           that's where we are on that.

8                     All right. So let's put that aside,  
9           unless there's anything else you want to -- I  
10          think I understand your arguments, Mr.  
11          Morris. There's nothing that withholds this.  
12          This is not a criminal case where there was  
13          some kind of confidentiality agreement.

14                    Is there any allegation,  
15          Mr. McDonough, do you have any proof that the  
16          safety or welfare of this person is in  
17          jeopardy in any way, shape or form?

18                   MR. MCDONOUGH: No, your Honor.

19                   THE COURT: So okay, there's not  
20          that.

21                   All right. So again, I'll read  
22          whatever cases you have. But I have to tell  
23          you, in the absence of you providing me any  
24          cases, it looks to me like he would get that  
25          information, okay? But that's the reason why

CONFERENCE

29

1 we are here this morning, to hear the  
2 arguments on that. So that's on that one.

3 Anything else anybody wants to add  
4 on the record as to that, as to those  
5 e-mails? And if not, we can move on to the  
6 rest.

7 MR. MORRIS: Yes, your Honor. Just  
8 for the Court, the *Matter of Madiros*,  
9 M-A-D-I-R-O-S, versus *New York State*  
10 *Education [Department]*, 30 NY3d 67 [2017].  
11 It's a New York Court of Appeals decision  
12 that says this Court is bound by the  
13 administrative record.

14 I just want to state one thing for  
15 this Court just there's no ambiguity.

16 THE COURT: When you say "bound by  
17 the administrative record," are you  
18 suggesting then that they can't provide an  
19 affidavit?

20 MR. MORRIS: That's right, your  
21 Honor.

22 THE COURT: That's fine. Again,  
23 Counsel, that's fine. That's why I asked  
24 you.

25 MR. MORRIS: Any question this Court



CONFERENCE

30

1 has, I'm going to address to the fullest  
2 extent --

3 THE COURT: That's fine. But you  
4 got to just recognize, of course, that you're  
5 flip-flopping. Two minutes ago you said they  
6 could and that would resolve it against your  
7 client, and now you're telling me they can't  
8 record cause I'm bound by this administrative  
9 record, which is fine, I don't care. But I'm  
10 getting dizzy.

11 MR. MORRIS: Well, physically they  
12 could. But --

13 THE COURT: Of course. They can do  
14 anything. But I meant legally.

15 MR. MORRIS: Legally, I don't  
16 believe so because *Madiros* and a number of  
17 cases.

18 THE COURT: And you know what? You  
19 might be right. So that's why I'm asking  
20 you. That's the reason why we're here this  
21 morning.

22 Also, let's not forget, are you guys  
23 going to take me up on the offer, are you  
24 going to brief it? You don't have to.

25 MR. MORRIS: I feel we've briefed

CONFERENCE

31

1           this extensively through the appeals. I  
2           mean, certainly, if it assists this Court.  
3           But the problem I have, your Honor, and  
4           again, I don't know what they have, but the  
5           blanket exception is contrary to longstanding  
6           law --

7                       THE COURT: No, no, no, Counsel.  
8           I'm asking a very specific question. Not to  
9           argue the case. I'm asking: Are you guys  
10          going to brief it? In other words, are you  
11          going to give me a memo of law on these  
12          issues that you're raising here this morning?  
13          To refer me to what you said to the Appellate  
14          Division is useless because I don't have  
15          that.

16                      Look, if you want to make your  
17          brief, if you want to reincorporate what you  
18          said to the Appellate Division, I don't care  
19          what your brief constitutes. I'm just  
20          asking: Are guys are going to brief?

21                      MR. MORRIS: My apologies. I  
22          assumed the Court had the brief. In that  
23          case, if it assists the Court, absolutely,  
24          I'll be sure --

25                      THE COURT: No, no. I don't require



CONFERENCE

32

1           it. What it assists is your client and your  
2           client. But I don't require it. We do our  
3           own work here. I'm offering you the  
4           opportunity to provide me with cases if you  
5           want to. If you don't want to, you don't  
6           have to. If you want to. That's all I'm  
7           asking. A simple question. Do you want  
8           that?

9                   MR. MORRIS: Yeah. And to do that  
10           appropriately and fully, may I just  
11           respectfully request -- again, I understand  
12           that there's an in camera inspection, 20  
13           e-mails. We have what I've asserted is  
14           blanket exceptions. And I've given your  
15           Honor some law and I can cite the *Data Tree*  
16           case. I understand there is another set of  
17           documents that were not provided.

18                   THE COURT: Yeah. That's what we're  
19           covering next.

20                   MR. MORRIS: Okay. That's the only  
21           thing that I have in that regard.

22                   THE COURT: You keep saying 20  
23           e-mails.

24                   I mean I have -- Mr. McDonough, am I  
25           missing e-mails here?

CONFERENCE

33

1 MR. MCDONOUGH: No.

2 THE COURT: I have two in front of  
3 me.

4 MR. MCDONOUGH: Your Honor, just on  
5 these because of the specificity and going  
6 through each one, I think the briefing would  
7 be appropriate and helpful.

8 THE COURT: Right.

9 MR. MCDONOUGH: You know, obviously,  
10 we're looking for the  
11 inter-agency/intra-agency exception here.

12 THE COURT: Correct.

13 MR. MCDONOUGH: These are not  
14 statistical. They're not instructions.  
15 These were used. And they're predecisional.  
16 They're from advisors to help make it. But  
17 rather than that, I think can speak in a  
18 brief more appropriately to each one.

19 THE COURT: Yeah. I thought in  
20 fairness to both of you, as in reference I  
21 think both of you said "shooting from the  
22 hip." Again, what that's telling me is, hey,  
23 Judge, give me an opportunity to read what he  
24 gave me and give me an opportunity to respond  
25 to it. So that's all I'm doing. All right.



CONFERENCE

34

1 Let's move on the to the second package.

2 So before you even argue anything on  
3 this one, Mr. McDonough --

4 And you can sit, Mr. Morris.

5 MR. MORRIS: Thank you.

6 THE COURT: I mean, there's certain  
7 things that jump off the page that I'm going  
8 to ask you, why weren't they disclosed?  
9 Because the statute specifically provides for  
10 the disclosure, in my mind, but I'm going to  
11 listen to you why it doesn't. I'm  
12 assuming -- well, let me put, for the record:  
13 I, having reviewed this, they are, with the  
14 following exceptions, intra-office/  
15 inter-office e-mails back and forth. And  
16 that's clearly covered under Section 87  
17 subdivision (2), subdivision (g). And it  
18 doesn't fit under any of the exceptions under  
19 that statute. Those are clearly not  
20 disclosable. And I'll hear argument from you  
21 in a moment.

22 However, the statute talks about  
23 exceptions to that, where you have to provide  
24 the information even though it's inter-office  
25 e-mails and things of that nature, and they

CONFERENCE

35

1 include statistical or factual tabulations of  
2 data. And, you know, in here, without  
3 disclosing what they are, I've got photos.  
4 Why aren't those being disclosed? Photos  
5 should be disclosed under the statute. But  
6 I'll listen to you and you know, I'll take a  
7 brief.

8 But why isn't -- you know, again, I  
9 don't know if it's going to be of any use to  
10 Mr. Morris, but the statute doesn't say you  
11 don't give it over. I've got a bunch of  
12 photos, I've got, hold on, I've got copies of  
13 applicable zoning ordinances and statutes.  
14 That's clearly discoverable, but that wasn't  
15 handed over.

16 So if you're going to tell the  
17 Court, Judge, you know what, we agree with  
18 you and that we'll hand over, but if not,  
19 explain to me why you didn't hand it over.

20 MR. MCDONOUGH: I think generally  
21 all those documents are used by the advisor  
22 in a predecisional memos to, you know,  
23 advise, and that they're expressing opinions  
24 and those opinions should be expressed  
25 freely. And that's in the Matter of Seacrest



CONFERENCE

36

1           *Construction Corp.*, 82 AD2d 546. And  
2           87(2)(g) exempts from FOIL these documents  
3           intra-agency/inter-agency, except those that  
4           meet the statistical instruction and final.  
5           But all these e-mails are predecisional.

6                   THE COURT: Yeah, but even still,  
7           predecisional or post decisional, if it's  
8           factual, if it's things like the code that  
9           was exchanged, or a Village ordinance that  
10          was exchanged, or in my mind photos, subject  
11          photos of the area, that statute in my mind  
12          clearly says, no, no, no, counsel gets that.  
13          It's in your records; they get it.

14                   So again, you're going to provide a  
15          brief, you're going to have to give me case  
16          law that says otherwise. Again, if I were  
17          deciding it this morning -- if I were  
18          deciding it this morning, he would get the  
19          identity of the person and he would get these  
20          photos and he would get these Village  
21          ordinance and these code statutes that were  
22          referenced because they're clearly outside  
23          the protection afforded your Village under  
24          FOIL. He would not get the inter-office  
25          communications because that's clearly within

CONFERENCE

37

1 the protections afforded by FOIL. So but  
2 again, you'll brief the issues.

3 MR. MORRIS: Yes.

4 THE COURT: Do you want to add  
5 anything, Mr. Morris, or argue?

6 MR. MORRIS: Yes, your Honor. So  
7 look, what counsel is arguing, this is right  
8 back to matter of *Dioso Faustino versus City*  
9 *of New York*. In the interim, I pulled up.  
10 It's 142 N.Y.S.3d 502 [2021 First Appellate]  
11 decision, also 2021 New York Slip Opinion  
12 00907.

13 Your Honor, like Mr. Lepper,  
14 Mr. Faustino was the subject of State  
15 enforcement. Unfortunately, when the law  
16 enforcement came after Mr. Diostino -- Mr.  
17 Faustino, he was killed. He was shot dead.  
18 And maybe it's more serious than a treehouse  
19 prosecution, but that body camera footage was  
20 reviewed by the New York City Police  
21 Department. And after we sued, they turned  
22 it over.

23 And where we appealed in this case  
24 was not only that blanket exemption, which  
25 you had there, you don't even have an



CONFERENCE

38

1 exemption here. They didn't mention these  
2 e-mails, so they don't now get to reinvent  
3 the exemption. The body camera footage that  
4 showed not only the shooting death of my  
5 client, also another officer being shot, not  
6 only was released after the fact but we had  
7 to sue to get our attorney fees because  
8 that's the remedy that the law provides.

9 The Public Officers Law basically  
10 provides two remedies. We ask for  
11 retraining. If the Village wants to contest  
12 retraining, we want either our attorney fees  
13 or under Public Officers Law Section 89  
14 subsection 8, there's a willful violation  
15 here. Especially when you prosecute, you  
16 have certain obligations beyond FOIL. But  
17 FOIL provides for a remedy. Whether it's  
18 Mayor Bill Deblasio's e-mails or the amount  
19 of nursing home deaths because of a policy  
20 from the governor, you have to produce it.

21 THE COURT: So you're saying you  
22 have to produce intra-office e-mails under  
23 FOIL?

24 MR. MORRIS: If you don't assert the  
25 exemption, it's waived. You're bound by the

CONFERENCE

39

1 administrative record, your Honor. The  
2 exception of the administrative record,  
3 excuse me.

4 THE COURT: You're saying, again, I  
5 don't have the record in front of me, you're  
6 saying that they failed to raise this  
7 exemption and therefore it's waived.

8 MR. MORRIS: Your Honor, they --

9 THE COURT: I got it.

10 MR. MORRIS: And they didn't  
11 identify it --

12 THE COURT: I got it. I got it.

13 MR. MORRIS: Understood, your Honor.

14 THE COURT: So you're going to brief  
15 it for me. You guys are going to give me  
16 cases on this.

17 And obviously, you're going to have  
18 to address that, Mr. McDonough.

19 MR. MCDONOUGH: Your Honor, just  
20 briefly. Page 3 of the Appellate Division,  
21 it says in a separate letter also dated  
22 January 22, 2019, the Village Clerk wrote:  
23 The petitioner's attorney, with respect to  
24 his demand for electronic mailings, that all  
25 discoverable electronic mailings were



CONFERENCE

40

1 provided excluding intra-agency electronic  
2 mail, which is not discoverable under the  
3 Public Officers Law. (Reading.)

4 MR. MORRIS: Judge, I'm glad my  
5 adversary raised that. May I respond?

6 THE COURT: Sure.

7 MR. MORRIS: Judge, when we told  
8 Gerard Glass, an attorney, that we were  
9 filing an order to show cause, and the docket  
10 shows it, he sent that e-mail. He sent that  
11 e-mail and this Court should admonish, not  
12 approve that practice. He sent an e-mail at  
13 the very last minute when they didn't send  
14 e-mails, when my client had to show up with a  
15 cart and a printer because they don't do  
16 e-mails.

17 THE COURT: But the Appellate  
18 Division acknowledged that the Village  
19 asserted that as a claim, no?

20 MR. MORRIS: After litigation. And  
21 that's what this Court needs to see, that  
22 after they were served with litigation, they  
23 responded with that e-mail. It wasted this  
24 Court's time and they lied to this Court.  
25 They told this Court that there were no

CONFERENCE

41

1 administrative remedies. Look, here's an  
2 e-mail, Judge. When in reality, yet this  
3 attorney, not another attorney, filed an  
4 order to show cause by providing a notice of  
5 that filing through fax, through electronic  
6 means. This Court was dissuaded to act upon  
7 a ripe petition, a petition that was properly  
8 before the Court with administrative remedies  
9 that were not available. But furthermore,  
10 your Honor, asserting exemptions, blanket  
11 exemptions to unknown sets of documents,  
12 which is why I continue to inquire, how many  
13 records were withheld? Or better yet, what  
14 did the Village do in response to the notice  
15 of litigation hold?

16 THE COURT: All right. Well,  
17 you're, obviously, now you're alleging  
18 untoward practices, which you may or may not  
19 have proof of, but again, you're going to  
20 have to brief that before me. And, you know,  
21 that's possibly something different.

22 All right. Do you want to set up a  
23 briefing schedule?

24 And for the record: I understand  
25 your other case involved loss of life and all



CONFERENCE

42

1           that, but I take very seriously citizens'  
2           rights to do what they want on their  
3           properties and municipalities' rights, to the  
4           extent they're allowed, to regulate same.  
5           These are very important issues on Long  
6           Island, and in this country, so I don't take  
7           it --

8                       MR. MORRIS:   Thank you.

9                       THE COURT:   -- so I don't take it --  
10           you know, obviously, your client paid good  
11           money for his property and he has the rights  
12           under the law to do with it as he's seeking  
13           to do, then that's why he's here.

14                      MR. MORRIS:   That's right, your  
15           Honor.   And, your Honor --

16                      (Crosstalk.)

17                      THE COURT:   So let's not minimize  
18           that.

19                      MR. MORRIS:   Your Honor, if you're  
20           ready to decide, I mean, we don't need to  
21           brief.   I can brief to the extent there's  
22           other issues.   It sounds like these records  
23           should have been produced.   It sounds like  
24           there's no -- I mean, this is a very simple  
25           inquiry.   It sounds like there's no

CONFERENCE

43

1 administrative remedy to bind otherwise an  
2 unknown amount of records. How many records  
3 did they withhold?

4 THE COURT: Again, I'm not an  
5 investigative agency. I have an attorney  
6 representing the Village. He's an officer of  
7 the court. He's standing up here in court  
8 telling me, Judge, we get everything we have.  
9 I'm bound by that. Obviously, I'm not  
10 suggesting you're lying, Mr. McDonough, but  
11 any attorney, Attorney X, could be lying to  
12 me. I have no way of knowing. That's not my  
13 role.

14 MR. MORRIS: A simple inquiry. And  
15 we can put this in the Appellate record.  
16 Document Entry 65-1 and the underlying  
17 federal case, we can look it up on PACER. I  
18 can show it to you.

19 THE COURT: Counselor, that's your  
20 role. That's my point. In other words, I'm  
21 not going out into the Village office and  
22 looking through their files. I can't do  
23 that. That's stepping outside of the role of  
24 a judge. What a judge does is ask an  
25 attorney representing a Village, have you



CONFERENCE

44

1 provided everything required by law? He now  
2 gets up and says, yes, I have.

3 And no one is suggesting that, Mr.  
4 McDonough.

5 If he's mistaken or lying, that's  
6 your job.

7 MR. MORRIS: And, Judge, we're --

8 THE COURT: And believe me, if you  
9 come to me with evidence of that, I'll take  
10 the appropriate action.

11 MR. MORRIS: Understood. And,  
12 Judge, we're going to proceed accordingly.  
13 Judge, just to be clear, and I just had the  
14 pleasure of meeting Mr. Mr. McDonough in  
15 court, and I'm not saying Mr. McDonough, I'm  
16 saying there was another attorney. There was  
17 another attorney --

18 THE COURT: No, no. I heard what  
19 you said. I heard what you said.

20 MR. MORRIS: Understood. And he was  
21 the prosecuting attorney in that matter.

22 THE COURT: Right. I understand.  
23 All right. Off the record.

24 (Whereupon, a discussion was held  
25 off the record.)

CONFERENCE

45

1 THE COURT: On the record.

2 All right. Anything further for the  
3 record?

4 MR. MORRIS: Just to be clear:  
5 Judge, we're going to file on July 30, 2021,  
6 briefing --

7 THE COURT: Correct.

8 MR. MORRIS: -- as to the ultimate  
9 request for relief in this matter.

10 THE COURT: Yes. What I did off the  
11 record is, I confirmed with counsel for both  
12 sides as to scheduling. And what counsel has  
13 asked for, and the Court agreed, is I'm  
14 giving both sides till July 30th. On or  
15 about that date you'll submit to the Court  
16 memos of law addressing the issues that were  
17 raised here this morning with regard to what,  
18 if anything, should be disclosed in  
19 connection with Mr. Morris' application under  
20 FOIL.

21 MR. MORRIS: Judge, would you like  
22 for us to brief, essentially, the attorney  
23 fees provision of our relief?

24 THE COURT: Off the record.

25 (Whereupon, a discussion was held



CONFERENCE

46

1 off the record.)

2 THE COURT: Okay. Back on the  
3 record.

4 Additionally, which is part and  
5 parcel of this application, Mr. Morris has  
6 asked for attorney fees, correct?

7 MR. MORRIS: Yes, your Honor.

8 THE COURT: So I believe both  
9 counsel have agreed that since you're  
10 submitting memos of law, you will also  
11 address the question of whether or not  
12 attorney fees are appropriate. And I would  
13 also suggest, since you're briefing it  
14 anyway, whether or not the amounts being  
15 sought are appropriate, and if not, why not.  
16 Okay?

17 MR. MCDONOUGH: Okay.

18 MR. MORRIS: Your Honor, just  
19 briefly, as you said, it will just be a  
20 matter if attorney fees, not the amount  
21 necessarily, is that all right?

22 THE COURT: Well, I would suggest,  
23 since you're briefing it, that you put in the  
24 amount you're requesting and you can include  
25 separately, again, I don't want to tell you

CONFERENCE

47

1           how to try this case, but you know what's  
2           required in connection with attorney fees  
3           application, you know, hourly and also  
4           explanations about your background, your  
5           experience, the going rate in the  
6           jurisdiction, all of that stuff for Mr.  
7           McDonough to review and speak to.

8                       And this way, again, we'll just do  
9           away with a delay because I'll be able to  
10          handle everything at once. But again, that's  
11          up to you. And more than likely if it's  
12          challenged, we may have to have a hearing on  
13          attorney fees. But at least I'll have all  
14          the paperwork and arguments ahead of time.  
15          Okay?

16                      MR. MORRIS: Yes, sir.

17                      THE COURT: And just one more thing.  
18          Look, there might be a third thing, or no?

19                      MR. MORRIS: There is, your Honor.

20                      THE COURT: Which is?

21                      MR. MORRIS: Essentially, the  
22          willful violation of the Freedom of  
23          Information Law as provided --

24                      THE COURT: Are you --

25                      MR. MORRIS: -- Public Officers Law.



CONFERENCE

48

1 THE COURT: -- seeking punitive  
2 damages on it? What are you seeking?

3 MR. MORRIS: Judge, the only relief  
4 we're really afforded, it looks like the  
5 former counsel of the Village of Babylon has  
6 contested the retraining. So the only relief  
7 that the Public Officers Law, the Freedom of  
8 Information Law provides is either the  
9 attorney's fees, which is a shall provision  
10 in this case, or the violation of Public  
11 Officers Law 89 in a willful violation, such  
12 as withholding a letter from the mayor about  
13 treehouses, among others things. Which  
14 again, if your Honor doesn't have it, it  
15 seems clear here where we're going here. So  
16 unless the Court says otherwise, we'll  
17 include that relief.

18 And I will further include the  
19 relief that this attorney provided to the  
20 Court of the filing of the order to show  
21 cause electronically and the subsequent  
22 e-mail for which the Village of Babylon, the  
23 respondents, now wish to rely upon.

24 THE COURT: Absolutely. Absolutely.  
25 I would include all those arguments and

CONFERENCE

49

1           you'll be able to refer to them, this way we  
2           don't have any straggler issues.

3                     Okay. That's it, though, right?

4                     MR. MORRIS: I believe so. Just so  
5           we're clear, your Honor: When, if the  
6           documents are to be produced, because as you  
7           know it's been a number of years here, when  
8           can we anticipate, I guess, the release of  
9           those documents?

10                    THE COURT: Mr. McDonough, that's  
11           you.

12                    MR. MCDONOUGH: On?

13                    THE COURT: No. You said you're  
14           going to reconsider whether or not you would  
15           provide --

16                    MR. MCDONOUGH: That will be done  
17           before the brief. As soon as possible.

18                    THE COURT: So before the 30th.

19                    MR. MCDONOUGH: Yes, before the  
20           30th.

21                    THE COURT: Okay. All right?

22                    Okay, Counsel. I'll wait for your  
23           brief on the 30th.

24                    MR. MORRIS: We thank the Court.

25                    THE COURT: And we'll put a control



CONFERENCE

50

1 date on it. So we need a control date.

2 COURT CLERK: Here?

3 THE COURT: No, no. We need a  
4 control date. So make it September.

5 COURT CLERK: 9-1.

6 THE COURT: 9-1. We're going to  
7 have a control date.

8 Off the record.

9 (Whereupon, a discussion was held  
10 off the record.)

11 \* \* \* \* \*

12 C E R T I F I C A T I O N

13

14 I, THERESA E. MCKIBBIN, RPR, hereby  
15 certify the above and foregoing is a true and  
16 accurate transcript of my stenographic notes  
17 taken by me in the above matter.

18

19

  
Theresa E. McKibbin, RPR  
Official Court Reporter

21

22

23

24

25

2:18-cv-07011-JMA-AYS | 2:21-cv-00014-JMA-AYS

---

# United States District Court

*for the*

## Eastern District of New York

---

**JOHN LEPPER and NOELLE LEPPER**, individually and as parents and natural guardians of their infant children,  
**B.J.L. AND B.I.,**

*Plaintiffs*

–v–

**VILLAGE OF BABYLON**; and  
**ESTATE OF RALPH SCORDINO**, Mayor-decedent, **KEVIN MULDOWNEY**, current/former Deputy Mayor, **ROBYN SILVESTRI**, current/former Village Trustee, **TONY DAVIDA**, current/former Village Trustee, **MARY ADAMS**, current/former Village Trustee and acting Mayor; **STEPHEN FELLMAN**, Village of Babylon Building Inspector; **SUZANNE SCHETTINO**, Department of Public Works; **GERARD GLASS**, Esq., current/former Village of Babylon Attorney; **DEBORAH LONGO**, Planning Board, Village of Babylon, each individually and in their official capacity, and John and/or Jane Doe, unnamed, unidentified complainants,

*Defendants*

---

## AFFIDAVIT OF CHARLIE LEPPER

---

LAW OFFICE OF CORY H. MORRIS

*Attorney for Plaintiffs*

[Cory.H.Morris@protonmail.com](mailto:Cory.H.Morris@protonmail.com)

VICTOR JOHN YANNACONE, JR., *of counsel*

[barrister@yannalaw.com](mailto:barrister@yannalaw.com)

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**AFFIDAVIT IN SUPPORT OF PLAINTIFFS’  
OPPOSITION TO  
DEFENDANTS’ REQUEST FOR SUMMARY JUDGMENT**

State of New York  
County of Suffolk } ss:

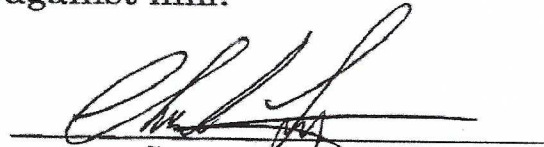
I, Charlie Lepper, being duly sworn, depose and say that the following statements are true and correct, to the best of my knowledge:

1. On February 4<sup>th</sup>, 2020, at approximately 2:30pm Suffolk County Police Department Det. Brian Grenz and his partner from Suffolk County Police Department criminal investigations Headquarters Yapank came to my house at 186 Cockonoe Avenue, Village of Babylon, Suffolk County, New York looking for my brother John Lepper.
2. I have come to learn that my brother John Lepper was the subject of massive retaliation by the Defendants in the above caption federal court action(s) because of his political views in opposition to the named Defendants’ political party and in the exposure of drug use, drug sale and drug paraphernalia in our neighborhood.
3. On February 4<sup>th</sup>, 2020, I notified the Suffolk County Police Department Detectives that John Lepper was not home or at my house.
4. At that time, John Lepper was visiting our mother’s home in Amityville, Suffolk County, New York.

5. I explained to Suffolk County Police Department Detective Grenz's and his partner that my brother had come from court earlier that day.
6. I asked Suffolk County Police Department Detective Grenz why he was here and looking for John Lepper.
7. I was informed that Suffolk County Police Department Detective Grenz received a request to arrest and charge my brother with a crime/violation of the law.
8. When John Lepper arrived at my home, I heard Suffolk County Police Department Detective Grenz tell my brother that the Defendant-decedent Mayor of Village of Babylon at the time, Ralph Scordino and a Town of Babylon councilman, Terry McSweeney, called the Suffolk County Police Department Detective Grenz's supervisor and told them that John Lepper threatened them.
9. I heard Suffolk County Police Department Detective Grenz tell my brother that Ralph Scordino and Terry McSweeney, called the Suffolk County Police Department and requested that John Lepper be arrested.
10. John Lepper immediately protested his innocence of any crime to the Suffolk County Police Department Detectives.
11. I heard both Suffolk County Police Department Detectives question my brother and, in response to John Lepper's answers, said to John Lepper that it was not a coincidence that both Suffolk County Police Department Detectives knew where John Lepper was earlier that day, meaning a court proceeding.
12. I heard both Suffolk County Police Department Detectives explain that they were informed of his whereabouts by, among others, the Defendant decedent-Mayor Scordino.



13. John Lepper, denied wrongdoing and told he Suffolk County Police Department Detecetives that his family, the Plaintiffs, sued The Village of Babylon and the decedent Defendant Mayor Scordino and that this was in retaliation for, among other things, the lawsuit that John Lepper and his family filed against the Village of Babylon.
14. Suffolk County Police Department Detective Grenz concluded his questioning of John Lepper by telling my brother, John Lepper, and I, in sum and substance, that you guys have been more than gentleman and my report will reflect that your brother, John Lepper, poses no threat to himself or anyone else in this community.
15. I observed my brother, John Lepper, look as if he was in despair, pain and anguish due to the questioning of the Suffolk County Police Department, his seizure and the threat of criminal process being lodged against him.

  
CHARLIE LEPPER

Sworn to before me on  
July 14<sup>th</sup>, 2021

  
Notary Public



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
JOHN LEPPER and NOELLE LEPPER, individually

and as parents and natural guardians of  
their infant children, B.J.L and B.I.,

Plaintiffs,

- against -

VILLAGE OF BABYLON; and RALPH SCORDINO,  
Mayor, KEVIN MULDOWNEY, Deputy Mayor, ROBYN  
SILVESTRI, Village Trustee, TONY DAVIDA,  
Village Trustee, MARY ADAMS, Village Trustee;  
STEPHEN FELLMAN, Village of Babylon Building  
Inspector; SUZANNE SCHETTINO, Department of  
Public Works; GERARD GLASS, Esq., Village of  
Babylon Attorney; DEBORAH LONGO, Planning  
Board, Village of Babylon, each individually  
and in their official capacity, and John  
and/or Jane Doe, unnamed, unidentified  
complainants,

Defendants.

Index No.: 2:18-cv-07011 JFB-GRB

-----x

135 Pinelawn Road  
Melville, New York

DEBORAH LONGO

October 7, 2019  
9:55 a.m.



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

23

1 Longo

2 Q. Throughout your tenure of employ  
3 for the Village of Babylon, has the building  
4 inspector changed?

5 A. No.

6 Q. Do you answer to anyone other  
7 than the building inspector for the Village of  
8 Babylon?

9 A. We all answer to the mayor.

10 Q. Who is the mayor?

11 A. Mayor Ralph Scordino.

12 Q. Explain when you say "we all  
13 answer."

14 A. Ultimately, he is, I guess, in  
15 charge of the office, so I would think  
16 ultimately he would be who we would answer to.

17 Q. Have you answered to the mayor  
18 previously?

19 A. Previous to my employment?

20 Q. Previous to today?

21 A. If he asks me a question about  
22 something, certainly I would answer him.

23 Q. Aside from asking you a question,  
24 does he send you correspondence?

25 A. Not usually directly. It's

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

62

1 Longo

2 A. Yes.

3 Q. Did you read the litigation hold  
4 notice that was served in this lawsuit?

5 A. I don't remember.

6 Q. Have you complied with the  
7 litigation hold notice that was served upon  
8 you in this case?

9 A. I don't remember.

10 Q. Had anyone told you to protect or  
11 preserve documents or e-mails, anything  
12 related to John Lepper?

13 A. I don't remember.

14 Q. Has Mr. Glass instructed you with  
15 reference to protecting and preserving e-mails  
16 pertaining to this case?

17 MR. TOSCA: Objection.

18 Please don't answer.

19 MR. MORRIS: Counsel, are you  
20 asserting privilege?

21 MR. TOSCA: I am.

22 Q. Anyone tell you to preserve and  
23 not destroy evidence in this case?

24 MR. TOSCA: Other than an  
25 attorney.



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

77

1 Longo

2 Q. Did the previous Village attorney  
3 send you electronic mail?

4 A. Never.

5 Q. This was a new thing, correct.

6 A. Um-hum.

7 Q. When you started receiving these  
8 electronic mailings, what, if anything, did  
9 you do with them?

10 A. What, if anything, did I do with  
11 them?

12 Q. Um-hum.

13 A. I would answer them.

14 Q. Have you deleted any of them?

15 A. I don't remember.

16 Q. You maintained all the electronic  
17 mails since you first received it from  
18 Mr. Glass?

19 A. I don't know. I don't know.

20 Q. Does anyone else have access to  
21 your electronic mail account?

22 A. We don't have -- we do not have  
23 passwords, so I would assume anybody could.

24 Q. You would assume anyone has  
25 access to your e-mail account; is that your

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

87

1 Longo

2 e-mails regarding the tree house?

3 A. No.

4 Q. Have you ever communicated about  
5 any other tree house ever?

6 A. No.

7 Q. It's the only tree house, right?

8 A. There was one a couple years ago  
9 across the street from me actually, funny  
10 enough, the Baldorf's at 50 Thomson, but that  
11 would be it. I don't even know if I sent an  
12 e-mail about it. That's the only other tree  
13 house in the Village that has been brought to  
14 my attention.

15 Q. It is it fair to say you have not  
16 corresponded by e-mail about any other tree  
17 house?

18 A. I never corresponded about any  
19 other tree house.

20 Q. And you received correspondence  
21 about a tree house?

22 A. From the Baldorfs? Probably not.  
23 If anything, from the architect.

24 Q. In terms of e-mail correspondence  
25 and tree houses, I'm going to ask you a



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

88

1 Longo

2 question, okay. Please let me know if you  
3 don't understand my question.

4 Have you communicated --

5 Withdrawn.

6 Who have you communicated with  
7 regarding a tree house by electronic mail?

8 A. I would say the only two people  
9 would Gerard, Mr. Glass or Mr. Fellman.

10 Q. You mentioned your husband  
11 before?

12 A. Yeah, and one time.

13 Q. Anyone else?

14 A. No.

15 Q. Let's start with Mr. Fellman.  
16 When did you communicate with  
17 him?

18 A. I don't remember a date.

19 Q. Have you deleted or destroyed any  
20 of those e-mails with Mr. Fellman concerning  
21 the tree house?

22 A. Not that I recollect, no.

23 Q. You don't know if you destroyed  
24 those e-mails?

25 A. No, I don't know. I produced a

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

89

1 Longo

2 lot of e-mails. I don't remember.

3 Q. When did you produce those  
4 e-mail?

5 A. In the last couple of weeks,  
6 couple months.

7 Q. Did you produce any in 2018?

8 A. I don't remember.

9 Q. Anything that would refresh your  
10 recollection?

11 A. No.

12 Q. How did you produce those  
13 e-mails?

14 A. By making copies of them.

15 Q. How did you do it?

16 A. Hit print.

17 Q. Then what?

18 A. I gave them in to, I would assume  
19 the clerk's office.

20 Q. You can't recall?

21 A. The clerk's office.

22 Q. When you say the clerk's office,  
23 who?

24 A. Jean Parker.

25 Q. That's what you did a couple



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

90

1 Longo

2 weeks ago?

3 A. Couple weeks ago and couple  
4 months ago, I believe.

5 Q. Any other time besides those two  
6 times?

7 A. No.

8 Q. Have you deleted or destroyed any  
9 electronic mail with Mr. Fellman since this  
10 litigation was commenced?

11 A. Regarding the tree house or  
12 regarding anything?

13 Q. Do you understand my question,  
14 ma'am?

15 A. I'm asking you because I don't  
16 understand.

17 MR. TOSCA: She asking you to  
18 clarify.

19 MR. MORRIS: Sounds like an echo.  
20 I get it.

21 Q. Ma'am, electronic mail you  
22 received from Mr. Fellman, have you or have  
23 you not deleted it since this litigation; yes  
24 or no?

25 A. I can't answer a question that I

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

91

1 Longo

2 don't understand.

3 Are you asking me --

4 Q. Ma'am, you receive electronic  
5 mail, correct?

6 A. Um-hum.

7 Q. You understand you can delete  
8 that mail, correct?

9 A. Um-hum.

10 Q. Have you deleted mail in the  
11 past?

12 A. Yes.

13 Q. You deleted e-mail, right?

14 A. Yes.

15 Q. You've received e-mail, correct?

16 A. Yes.

17 Q. You received e-mail from  
18 Mr. Fellman, correct?

19 A. Yes.

20 Q. Those e-mails that you received  
21 from Mr. Fellman, they're maintained in your  
22 in box until you do something with them?

23 A. Um-hum.

24 Q. Have you or have you not deleted  
25 e-mails with Mr. Fellman since this litigation



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

92

1 Longo

2 commenced?

3 A. I probably deleted some.

4 I don't know exactly what you're  
5 question is. Are you referring to any and all  
6 emails? That's my question.

7 Q. Ma'am, I'm referring to any and  
8 all e-mails.

9 A. Any and all e-mails, I have  
10 deleted some from Mr. Fellman.

11 MR. MORRIS: We'll take a break.

12 It's 11:22.

13 (Whereupon, a recess was taken  
14 from 11:22 a.m. through 11:31 am.)

15 MR. MORRIS: Time now is 11:31.

16 (A call was placed to the court  
17 and an answering service picked up.)

18 MR. MORRIS: Good morning. This  
19 is Cory Morris calling on Lepper versus  
20 the Village of Babylon 18CV07011.

21 I'm calling following up for a  
22 ruling. Please call me back at your  
23 convenience, (516)507-2843,  
24 (516)507-2843 Cory Morris on Lepper  
25 versus Village of Babylon 18CV07011.

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

93

1 Longo

2 Thank you.

3 Let's continue.

4 MR. TOSCA: All right I will get  
5 her.

6 (Mr. Tosca leaves the room and  
7 returns with Ms. Longo.)

8 Q. Mrs. Longo, have you discussed  
9 your testimony during the break?

10 A. Yes.

11 Q. With whom?

12 A. Eric.

13 Q. Anyone else?

14 A. No.

15 Q. Before, you stated you received  
16 electronic mail from your husband regarding  
17 the tree house?

18 A. Um-hum.

19 Q. Which tree house?

20 A. No particular tree house.

21 Q. I'm sorry?

22 A. No particular tree house.

23 Q. Your testimony is that your  
24 husband e-mailed you about no particular tree  
25 house; is that right?



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

94

1 Longo

2 A. Yes.

3 Q. He just sent an e-mail with a  
4 Reggae song. That was -- the title of the  
5 album was Tree House.

6 Q. Who is the artist?

7 A. I don't know. It was a Reggae  
8 song. I think it was Tree House. I'm not  
9 sure.

10 Q. Do you listen the Reggae music?

11 A. Occasionally.

12 Q. Was this a Reggae artist of which  
13 you are familiar?

14 A. No.

15 Q. Is this a subject matter of which  
16 you are familiar?

17 A. No.

18 Q. He just sent you tree house  
19 e-mail, you have no idea of which tree house  
20 he was --

21 A. It was ironic.

22 Q. What is the irony?

23 A. There is a tree house issue going  
24 on in the Village of Babylon.

25 I think the name of the song was

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

95

1 Longo

2 like Babylon Phoenix or something that, I  
3 don't really remember.

4 Q. Fair to say you and your husband  
5 discussed the Babylon tree house issue?

6 A. Yes.

7 Q. You said you received electronic  
8 mail from possibly Mr. Glass; is that right?

9 A. Yes.

10 Q. How many electric mailings did  
11 you receive possibly from Mr. Glass regarding  
12 a tree house?

13 A. I don't know exactly. It  
14 wouldn't have been -- I think just in -- I  
15 don't really know, 10, 15. I'm not sure. I  
16 don't know.

17 Q. Have you deleted those electronic  
18 mailings from Mr. Glass?

19 A. No.

20 Q. Have you provided those  
21 electronic mailings from Mr. Glass to anyone?

22 A. Yes, to the FOIL request.

23 Q. Any other request?

24 A. No.

25 Q. Have you provided them as a



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

96

1 Longo

2 result of this Federal litigation?

3 A. I would assume that's what it was  
4 in response to.

5 Q. To whom did you provide them?

6 A. Jean Parker.

7 Q. Anyone --

8 A. Village Clark.

9 Q. Anyone else?

10 A. No.

11 Q. How about that e-mail from your  
12 husband, you said there was only one, right?

13 A. Um-hum.

14 Q. When did you provide that to  
15 someone and whom did you provide it to?

16 A. I think it was just last week or  
17 two weeks ago. I'm not sure. I don't  
18 remember, couple weeks ago.

19 Q. When you say, couple weeks ago,  
20 you don't remember what happened a couple  
21 weeks ago?

22 A. Not with reference to this, no.

23 Q. Can you tell me the circumstances  
24 under which you provided that e-mail?

25 A. I don't remember. I really don't

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

97

1 Longo

2 remember. I don't remember.

3 Q. Any reason you're having such  
4 difficulty remembering electronic mail that's  
5 the subject of a Federal litigation that you  
6 say you provided a couple weeks ago?

7 A. I live a very busy life. This is  
8 a blip to me to be honest with you.

9 Q. Tell us what keeps you so busy  
10 that prevents you from remembering these  
11 e-mails from a couple weeks ago?

12 A. I work full time. I have a very  
13 young grandson that I help my daughter with a  
14 lot, so I'm busy.

15 Q. Anything else?

16 A. No.

17 Q. Regarding this Federal lawsuit,  
18 you don't recall the circumstances under which  
19 you produced that e-mail?

20 A. I don't remember, sir. I don't  
21 remember.

22 Q. Do you know to whom you spoke?

23 A. Spoke about what?

24 Q. The electronic mail concerning  
25 your husband and the Village of Babylon tree



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

129

1 Longo

2 objection.

3 MR. MORRIS: You're asserting  
4 spousal privilege, Counsel?

5 MR. TOSCA: Yes, I am.

6 Q. What about Mr. Fellman? What  
7 conversation did you have with Mr. Fellman  
8 upon being sued?

9 A. Similar to the mayor, that I was  
10 just upset about it and not happy.

11 Q. Why were you upset?

12 A. Because I don't believe I belong  
13 here.

14 Q. Why not?

15 A. Because I took in paperwork and  
16 spoke to be Lepper for all of three minutes,  
17 somehow I find myself here.

18 Q. Who else did you say you were  
19 upset to?

20 A. No one else.

21 Q. Now that you recall that  
22 conversation with the mayor, what, if any,  
23 other conversation did you have regarding a  
24 tree house with Mayor Scordino?

25 A. I don't recall.

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

130

1 Longo

2 Q. Has anyone told you to say you  
3 that you don't recall?

4 MR. TOSCA: Objection.

5 Don't answer the question.

6 Q. Ma'am, in the course of your  
7 duties as secretary to the building inspector  
8 for the Village of Babylon, do you communicate  
9 with Stephen Fellman?

10 A. Yes.

11 Q. How do you communicate with  
12 Stephen Fellman?

13 A. E-mail.

14 Q. How often do you communicate with  
15 Stephen Fellman?

16 A. Usually Tuesdays, Wednesdays, and  
17 Fridays.

18 Q. When Mr. Fellman works, you  
19 communicate with him by e-mail?

20 A. E-mail.

21 Q. How does Mr. Fellman communicate  
22 back with you?

23 A. E-mail.

24 Q. Does he maintain a computer in  
25 the Village of Babylon?



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

131

1 Longo

2 A. No.

3 Q. How do you know that he has  
4 access to e-mail?

5 A. Because he is a building  
6 inspector in other places and he'll e-mail me  
7 back.

8 Q. What e-mail does he use?

9 A. Crazytwodays@hotmail.

10 Q. Any other e-mail?

11 A. No, and I text him from my  
12 computer through Vtext.

13 Q. When you say you text through  
14 your computer through Vtext, to what are you  
15 referring?

16 A. I can text him to his phone from  
17 my computer.

18 Q. Have you texted Mr. Fellman  
19 concerning Mr. Lepper?

20 A. I don't remember. It would have  
21 been text or e-mail if I had to discuss  
22 something with him. I don't remember which  
23 one.

24 Q. You understand the question,  
25 right?

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

132

1 Longo

2 Did you text Mr. Fellman  
3 concerning a tree house, yes or no?

4 MR. TOSCA: Objection.

5 You can answer.

6 A. It would have been text or  
7 e-mail. I don't remember exactly. It could  
8 have been both. I don't know.

9 Q. Anything that would refresh your  
10 recollection?

11 A. Obviously reading my e-mails, it  
12 was one or the other.

13 Q. When you say text message, is  
14 that what you're referring to as e-mail as  
15 well?

16 A. Yes. You can text from your  
17 computer through Vtext.

18 Q. Is that what you did with  
19 Mr. Fellman?

20 A. That or e-mail.

21 Q. You can't recall whether or not  
22 you texted Mr. Fellman regarding --

23 A. Because I use both.

24 Q. Because you use both?

25 A. Um-hum.



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

133

1 Longo

2 Q. As secretary to the building  
3 inspector for the Village of Babylon, do you  
4 receive complaints?

5 A. I do.

6 Q. How?

7 A. By phone.

8 Q. Any other form?

9 A. Sometimes we get a complaint  
10 through, it's called a work flow notification,  
11 it comes via the Village of Babylon website.

12 Q. Anything else?

13 A. No.

14 Q. How do you maintain these  
15 complaints?

16 A. We get a call on something. We  
17 would send out a code enforcer to take a  
18 picture of whatever it might be, and depending  
19 on what it is, go to who would take care of  
20 it.

21 Q. How --

22 I'm sorry.

23 A. It could be code enforcement, it  
24 be a complaint. Everything comes through my  
25 office regarding complaints for some reason,

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

134

1 Longo

2 so it could be a car on a street to grass  
3 that's too high. It would depend.

4 Q. As secretary to the building  
5 inspector of the Village of Babylon, is it  
6 your testimony that you receive all complaints  
7 to Village of Babylon?

8 A. We get a lot of complaints, but  
9 not all. Obviously the mayor's office and the  
10 work flow notification.

11 Q. The mayor's office receives  
12 complaints directly?

13 A. They receive complaints directly,  
14 yes.

15 Q. How do you maintain the  
16 complaints that you receive?

17 A. If they came in on a phone, we  
18 would have a message pad that we keep.

19 Q. Is the message pad the item to  
20 which you referred earlier?

21 A. For what?

22 Q. You indicated there was a marble  
23 notebook.

24 A. No, that's an appointment book  
25 for Steve so I can keep track of what



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

135

1 Longo

2 inspections have been called in from  
3 contractors.

4 Q. In other words, there is  
5 another --

6 A. Regular message, phone message  
7 pad.

8 Q. Do you maintain that phone  
9 message pad in the regular course of business?

10 A. Yes. Everybody has one.

11 Q. Did you ever utilize that phone  
12 message pad for a tree house within the  
13 Village of Babylon?

14 A. I don't believe any complaints  
15 came directly into my office regarding the  
16 tree house.

17 Q. When you say you don't believe,  
18 do you know.

19 A. I don't remember. I just don't  
20 know. My recollection is, it came from Tony  
21 Davida.

22 Q. You don't know, you don't  
23 remember, or is it both?

24 A. Both. I don't remember, but I do  
25 know Tony Davida complained about it.

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

136

1 Longo

2 Q. Who would know?

3 A. Whoever took a message, if  
4 somebody else took a message. I did not.

5 Q. Ma'am, as secretary to the  
6 building inspector for the Village of Babylon,  
7 are you responsible for the maintenance of the  
8 office?

9 A. Yes, but I don't monitor people's  
10 phone message pads. If it has nothing to do  
11 with us, if somebody gets a message, they act  
12 on it. I don't believe my office took any  
13 complaints regarding the tree house by phone.

14 Q. But you don't know?

15 A. I don't know exactly, no; but I  
16 don't believe we did.

17 Q. And you don't know what  
18 complaints the mayor received, correct?

19 A. I don't know.

20 Q. What's the procedure for handling  
21 complaint received in the course of duties as  
22 secretary to building inspector for the  
23 Village of Babylon?

24 A. There would be a couple of  
25 different ways. Like I said, depending on



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

137

1 Longo

2 what it was. If it's a construction  
3 complaint, we would alert Steve and he would,  
4 in the course of his time with the Village, go  
5 past it, determine if there's an issue or not.  
6 If it's another issue, parking issue or  
7 something, I would say refer it to whoever  
8 might have that, like code enforcement.

9 Q. What happens if it's not the two  
10 scenarios of which you testified?

11 A. I would determine if it's  
12 something of building, then we would address  
13 it. If it wasn't, I would refer it to the  
14 office who would be responsible for it,  
15 highway department, the court, the clerk's  
16 office.

17 Q. And you would make that  
18 determination?

19 A. Myself or one of the other women  
20 in the office.

21 Q. You're responsible for the other  
22 women in the office, correct?

23 A. Yes, to a degree.

24 Q. When you say to a degree, what do  
25 you mean?

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

138

1 Longo

2 A. I would say sign off on their  
3 time sheets, you know, that kind of thing,  
4 monitoring who is in the office, who is not,  
5 lunch hours, that kind of thing, making sure  
6 the office is staffed.

7 Q. You're not responsible for what  
8 they do; is that right?

9 MR. TOSCA: Objection.

10 You can answer over objection.

11 A. They would defer to me if they  
12 didn't know what to do with something.

13 Q. As secretary to the building  
14 inspector for Village of Babylon, do you know  
15 who can make a complaint?

16 A. Do I know who can make a  
17 complaint?

18 Q. Who can make a complaint within  
19 the Village of Babylon?

20 A. Anybody.

21 Q. Have you ever received a  
22 complaint from an elected Village of Babylon  
23 official?

24 A. Yes.

25 Q. Who?



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

139

1 Longo

2 A. Tony Davida. I received  
3 complaints from Mary Adams.

4 Q. Who else?

5 A. Kevin.

6 Q. Who else?

7 A. The mayor.

8 Q. Who else?

9 A. That would be it.

10 Q. What complaint have received from  
11 the mayor?

12 A. I mean, it could be, he might  
13 drive around and whatever property, does this  
14 property have a building permit, does that  
15 property have a building permit. It could be  
16 a host of things.

17 Q. Ma'am, you understand I'm not  
18 asking for could be's correct?

19 A. You're asking me something I  
20 can't answer definitively.

21 Q. Has the mayor brought so many  
22 complaints to you that you can't answer  
23 definitively?

24 MR. TOSCA: Objection.

25 A. On occasion, yeah.

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

140

1 Longo

2 Q. The mayor's brought you multiple  
3 complaints?

4 A. Absolutely.

5 Q. Can you tell us the circumstances  
6 under which you first met Stephen Fellman?

7 A. My first day of work.

8 Q. How long have you known  
9 Mr. Fellman for?

10 A. Since my first day of work in  
11 2008.

12 Q. To whom do you report?

13 A. Stephen Fellman.

14 Q. Do you know to whom Stephen  
15 Fellman reports?

16 A. I would assume the mayor.

17 Q. When you say, you would assume,  
18 do you not know?

19 A. I don't know definitively, that  
20 would my -- that's what I would say, the  
21 mayor.

22 Q. What about in-definitively?

23 A. No one else.

24 Q. The mayor?

25 A. The mayor.



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

141

1 Longo

2 Q. What is the day-to-day  
3 interaction with Stephen Fellman?

4 A. Very limited. I only see him on  
5 Tuesday afternoons for court and to go over,  
6 for him to come in and sign paperwork.

7 Q. Can you explain what you mean by  
8 Tuesday afternoon for court?

9 A. Any -- court is at 2 o'clock on  
10 Tuesday afternoon, so if there's any tickets  
11 written, he would have to come in to appear.  
12 Other than that, it would be whatever permits  
13 he would be signing off on, anything else, the  
14 administrative end in the office.

15 Q. Can you tell us in that  
16 interaction before, what is it that you do and  
17 what is it that he does?

18 A. He usually just shows up at court  
19 downstairs. I would let him know in the  
20 morning what was on the court calendar, and if  
21 he needed any support documentation for it, he  
22 would ask me for it then.

23 Q. How would you learn what is on  
24 the court calendar?

25 A. I usually get it on Friday

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

142

1 Longo

2 afternoons or Monday.

3 Q. How do you get it?

4 A. From Irene, the court clerk.

5 Q. What else do you receive from  
6 Irene, the court clerk?

7 A. That's it.

8 Q. How do you receive it from  
9 Irene, the court clerk?

10 A. Paper copy.

11 Q. Do you know how you receive that  
12 paper copy?

13 A. She hands it to me.

14 Q. In the course of your duties as  
15 secretary to the building inspector for the  
16 Village of Babylon, what communications did  
17 you have to with Irene, the Village of Babylon  
18 court clerk?

19 A. Just in that, what might be  
20 coming up, what might be in court that week.  
21 It could be from Steve, it could be Richie  
22 Meyer who might have written a summons out of  
23 my office.

24 MR. MORRIS: Time is 12:21.

25 (Mr. Morris changed battery in



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

143

1 Longo

2 camera.)

3 MR. MORRIS: Time now is 12:21.

4 Q. When you say Irene would tell you  
5 what's coming up, can you explain what you  
6 mean by that?

7 A. She would give me the court  
8 calendar and highlight anything that was  
9 written out of my office, so I can let them  
10 know.

11 Q. Who is them?

12 A. Steve or Richie Meyer.

13 Q. Who is Richie Meyer?

14 A. He's the rental housing  
15 inspector.

16 Q. When you say you would get a  
17 court calendar from Irene with highlights, who  
18 made the highlights?

19 A. Irene.

20 Q. So the court clerk would hand you  
21 a calendar that was already highlighted?

22 A. Um-hum.

23 Q. Did the court clerk have  
24 opportunity to hand you anything else  
25 throughout your tenure as secretary to the

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

144

1 Longo

2 building inspector for the Village of Babylon?

3 A. No. Just to let me know what was  
4 in court for either of them.

5 Q. How would she do this?

6 A. She would walk up the stairs to  
7 my office. She's downstairs, I'm upstairs.

8 Q. Have you had conversations with  
9 her?

10 A. Have I had conversations with  
11 her? Yes, she is a friend.

12 Q. How long have you known her?

13 A. The time I'm at the Village since  
14 2008.

15 Q. Have you had opportunity to  
16 discuss the tree house with her?

17 A. I'm sure I have. I don't  
18 remember when, but I'm sure I have.

19 Q. When you say you don't remember  
20 when, do you remember the substance of the  
21 conversation?

22 A. Just my upsetment [sic].

23 Q. I'm sorry, what was that word?

24 A. My upsetment.

25 Q. You told him you were upset?



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

145

1 Longo

2 A. Yes.

3 Q. What did she say in response?

4 A. I don't remember verbatim. I'm  
5 sure she felt bad.

6 Q. When you say you don't remember  
7 verbatim, can you tell without verbatim, what  
8 she said?

9 A. I'm sure she expressed her  
10 feelings that she felt badly for me.

11 Q. When you say felt badly, what did  
12 she say?

13 A. I don't remember. Just that I'm  
14 sure she said she felt badly.

15 Q. In sum and substance, what were  
16 you told about a tree house from Irene the  
17 court clerk for the Village of Babylon?

18 A. I wasn't told anything about a  
19 tree house from Irene. I would just be told  
20 that Mr. Lepper was going to be in court, so  
21 he would know and if I needed to get anything  
22 for him, copies of the summons or anything  
23 like that.

24 Q. When you told Irene you were  
25 upset, what, if anything, did she say in

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

146

1 Longo

2 response?

3 A. I don't remember exactly. I'm  
4 sure she said she felt badly.

5 Q. Have you had any other  
6 communications in the course of your duties as  
7 secretary to the building inspector for the  
8 Village of Babylon with the Village of Babylon  
9 court?

10 A. No.

11 Q. To be clear, when you had the  
12 conversation the Irene from the Village of  
13 Babylon court, where were you?

14 A. Probably at my desk when she  
15 brought maybe brought an agenda up or I could  
16 have been downstairs seeing her walking up or  
17 something. I don't remember.

18 Q. You don't recall?

19 A. No.

20 Q. But it was after this lawsuit  
21 that you recall being upset?

22 A. Yes.

23 Q. Were you upset prior to being  
24 sued?

25 A. No, it had nothing to do with me.



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

147

1 Longo

2 Q. Did you have conversation with  
3 Irene prior to being sued?

4 A. Maybe in the context of the  
5 summons coming up, that's all.

6 Q. Anything else?

7 A. No.

8 Q. What do you recall?

9 A. I don't recall. I don't recall  
10 having a conversation with her about the  
11 summons. It just wouldn't come up in  
12 conversation.

13 Q. Who makes up the Village of  
14 Babylon Zoning Board of Appeals?

15 A. I don't know all the names.  
16 Bruce Humenik is the chair, I don't know all  
17 of them, they've changed in the last couple of  
18 years.

19 Q. Can you say the names of these  
20 persons?

21 A. Could I say all of them, no. I  
22 know Greg, Jeff Weber, and Bruce Humenik.

23 Q. Who are the persons of who you do  
24 speak?

25 A. On the board?

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

148

1 Longo

2 Q. Um-hum.

3 A. I do see Jeff Weber on occasion.

4 Q. When do you see Jeff Weber?

5 A. He works part time, I believe  
6 he's part time in the treasurer's office.

7 Q. When you say treasurer, treasurer  
8 of what?

9 A. In the Village of Babylon.

10 Q. And he also acts as a person on  
11 the Zoning Board of Appeals?

12 A. Yes.

13 Q. What is his position on the  
14 Zoning Board of Appeals?

15 A. I just think he's a member. I  
16 don't know, if he has some other -- I think  
17 he's just a member.

18 Q. Under what circumstances do you  
19 communicate with Mr. Weber?

20 A. Just basically getting a cup of  
21 coffee, hello and goodbye. I don't refer to  
22 him at all. I'm not very friendly with him.

23 Q. In your capacity of secretary to  
24 the building inspector for the Village of  
25 Babylon, have you ever communicated with the



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

149

1 Longo

2 Village of Babylon Zoning Board of Appeals or  
3 any of its members?

4 A. With Mr. Humenik.

5 Q. Under what circumstances do you  
6 have occasion to communicate with Mr. Humenik?

7 A. He might come in and ask to make  
8 an appointment, when is Steve gonna be in, I'd  
9 like to talk to him about something.

10 Q. Can you give an example of when  
11 that occurs?

12 A. Usually when he comes in to go  
13 over what might be coming up on the Zoning  
14 Board of Appeals calendar and he might have a  
15 question, he'll stop in and ask when Steve  
16 will be around or can I have him give him a  
17 call.

18 Q. Does he communicate via  
19 electronic mail with Mr. Fellman?

20 A. I don't -- honestly, I don't know  
21 whether he communicates with him by e-mail.

22 Q. Has he asked you to relay a  
23 message to Mr. Fellman?

24 A. Just in the sense of, can you  
25 have him give me a call or when is he going to

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

150

1 Longo

2 be in.

3 Q. Has Mr. Humenik spoke to you in  
4 regards to a tree house and Mr. Fellman?

5 A. I know Mr. Fellman spoke with  
6 him. He did not speak with me directly.

7 Q. How do you know that?

8 A. I just remember it. I remember  
9 him talking to him about it.

10 Q. When did this occur?

11 A. I would assume sometime last  
12 year.

13 Q. Do you know which month?

14 A. I don't.

15 Q. Do you know under the  
16 circumstance to which you observed such  
17 conversation?

18 A. I think he wanted to talk to him  
19 about a Zoning Board of Appeals hearing.

20 Q. When did this occur?

21 A. Sometime last year.

22 Q. Was it one communication or  
23 multiple communications?

24 A. I don't remember exactly. I  
25 don't remember at all.



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

163

1 Longo

2 Q. Have you ever seen a child's tree  
3 house?

4 A. I've seen pictures, yes.

5 Q. So you're aware that children  
6 play in tree houses, right?

7 MR. TOSCA: Objection.

8 A. Not mine.

9 Q. Are you aware of any children  
10 playing in the village of Babylon in a tree  
11 house?

12 A. No.

13 Q. In the course of your regular  
14 professional activities as Village of Babylon  
15 secretary to the building inspector, have you  
16 ever issued a Certificate of Occupancy for a  
17 garage?

18 A. Yes.

19 Q. In the course of your regular  
20 professional activities as the secretary to  
21 the building inspector for the Village of  
22 Babylon, have you ever issued a Certificate of  
23 Occupancy for a structure less than 90-square  
24 feet?

25 A. For a structure less than

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

164

1 Longo

2 90-square feet, no. I don't think so.

3 Q. In the course of your regular  
4 professional activities as the secretary to  
5 the building inspector for the Village of  
6 Babylon, do you investigate circumstances  
7 under which there is a violation of the  
8 Village of Babylon Building Department based  
9 on a complaint?

10 A. That would be up to the building  
11 inspector.

12 Q. Have you ever investigated  
13 circumstances under which there is a violation  
14 of the Village of Babylon code?

15 A. That would be the building  
16 inspector.

17 Q. To be clear, you would not do  
18 that, correct?

19 A. Not unless I was instructed by  
20 the building inspector.

21 Q. Have you been instructed by the  
22 building inspector?

23 A. On occasion, yes.

24 Q. In the course of your  
25 professional activities as secretary to the



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

165

1 Longo

2 building inspector for the Village of Babylon,  
3 please tell us the circumstances under which  
4 you have investigated whether there is a  
5 violation of the Village of Babylon code based  
6 on a complaint.

7 A. Trying to think of something in  
8 particular. We have had people building  
9 garages without permits. We have had to send  
10 somebody. We have had complaints about a  
11 property on Sumpwams Avenue, S-U-M-P-W-A-M-S.  
12 I'm trying to think. I can't think of an  
13 exact address or something to give you. I've  
14 sent him down to Salt Meadow when somebody was  
15 gutting a kitchen, that was only a couple  
16 months ago, we sent Mr. Fellman down there and  
17 I had to send them a notice of violation.

18 Q. In the course of your activities  
19 as the secretary to the building inspector for  
20 the Village of Babylon, do you investigate  
21 circumstances under which there is a violation  
22 of the Village of Babylon code based upon a  
23 complaint from Kevin Muldowney?

24 A. The only thing that he complained  
25 about is this property on Sumpwams to me

John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

166

1 Longo

2 directly.

3 Q. Explain your involvement in that  
4 investigation?

5 A. They're a New York Rising house,  
6 so it's been -- they're involved in a lawsuit,  
7 their contractor stole hundreds of thousands  
8 of dollars from them, so we have been on top  
9 of them, I would say, for property maintenance  
10 and trying to work with them to rectify this  
11 situation, and by we, I don't mean me, I mean  
12 the board.

13 Q. To be clear, the board is  
14 involved in that investigation?

15 A. The board of trustees along with  
16 the building inspector.

17 Q. In the course of your regular  
18 professional activities as the Village of  
19 Babylon secretary to the building inspector,  
20 do you investigate circumstances under which  
21 there is a violation of the Village of Babylon  
22 code based upon a complaint by Robyn  
23 Silvestri?

24 A. No.

25 Q. In the course of your regular



John Lepper v. Village of Babylon  
Deborah Longo - October 7, 2019

167

1 Longo

2 professional activities as the secretary to  
3 the building inspector for the Village of  
4 Babylon, do you investigate circumstances  
5 under which there is a violation of the  
6 Village of Babylon code based on a complaint  
7 from Tony Davida?

8 A. Yes.

9 Q. Can you explain the circumstances  
10 of that investigation?

11 A. Mr. Lepper's tree house.

12 Q. Tell us what occurred.

13 MR. TOSCA: Objection.

14 You can answer.

15 A. He came in the office one day  
16 last year and said there was a platform being  
17 built very close to the street in a tree.

18 Q. Are there any other circumstances  
19 under you have had opportunity to investigate  
20 a complaint brought by Mr. Davida?

21 A. I don't recall.

22 Q. When you say you investigated a  
23 complaint about Mr. Lepper's tree house, can  
24 you explain on behalf of who you investigated  
25 such complaint?